

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 23.01.2023**

**CORAM**

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

W.P.(MD) No.12142 of 2020 and  
WMP (MD) No.10451 of 2020

AL.S.Periakaruppan

... Petitioner

-VS-

1.The Principal Secretary to Government  
Transport (D1) Department,  
Secretariat,  
Fort St. George,  
Chennai.

2.The Managing Director,  
Tamilnadu State Transport Corporation (KMB) Ltd,  
New Railway Station Road  
Kumbakonam 612 001.

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the 1<sup>st</sup> respondent in Letter No.

1543/2020-6 dated 24.08.2020 and quash the same and consequently direct the respondent to refund the recovered the one stage reduction from basic pay.

|                 |                                                                                                 |
|-----------------|-------------------------------------------------------------------------------------------------|
| For Petitioner  | : Mr. K.Gokul                                                                                   |
| For Respondents | : Mr.G.V.Vairam Santhosh for R1<br>Additional Government Pleader<br>Mr.P.Balasubramanian for R2 |

### **ORDER**

This writ petition has been filed challenging the impugned order of the 1<sup>st</sup> respondent dated 24.08.2020 and for a consequential direction to the respondent to refund the recovered the one stage reduction from basic pay.

2.It is the case of the petitioner that initially he was appointed as a Technical Assistant on 17.10.1981 and promoted as Deputy Manager and retired from service on 31.03.2018. While he was working in the Karaikudi Region, he was issued with a charge memo dated 25.11.2017 levelling two charges against him, for which, explanation was given by him on 22.12.2017. Subsequently a show cause notice dated 19.02.2018 was

issued, for which, the petitioner submitted his explanation on 03.03.2018 and 23.03.2018 respectively. However, before his retirement, the 2<sup>nd</sup> respondent passed a final order on 23.03.2018 stating that the charges have been proved and a punishment was imposed by reducing his basic pay by one stage. It is his case that without an enquiry being conducted, passing of final order of punishment, at the time of retirement, is said to be illegal and violation of principles of natural justice. An appeal has been preferred to the first respondent. Since no steps were taken in the said appeal, the petitioner sent a representation on 05.02.2020 and hence, the petitioner filed a writ petition before this Court and this Court directed the 1<sup>st</sup> respondent to consider the said appeal. Thereafter, in pursuant to the said order, the first respondent passed the impugned order on 24.08.2020, challenging which, the petitioner is before this Court with this writ petition.

3. The learned counsel for the petitioner would submit that admittedly, Karaikudi Transport department Managing Director entered a contract with the TEXCO employees, through an agreement, for engaging 82 security staffs, following which, the petitioner was allowed to engage 79

staff. Thereafter, the Director restricted the number of Security guards to 51 by a circular dated 22.08.2017. However, the petitioner immediately vide letter dated 30.11.2017 sent a proposal to the Managing Director to sanction 63 posts and the same was approved on 02.12.2017. However, the said proposal was forwarded by way of explanation to the disciplinary authority, and the disciplinary authority immediately passed the order impugned. The learned counsel would further submit that as per the agreement only the petitioner engaged 79 employees, which is not stated to be against the norms. He would further submit that the impugned order is passed without hearing the petitioner and without following the principles of natural justice. Accordingly, he prays for interference.

4. Per contra, the learned standing counsel for the respondents would submit that when the Managing Director himself restricted the number of guards on contract basis vide circular dated 22.08.2017 from 82 to 51, the petitioner as the Deputy Manager has not followed the instructions and thus caused loss to the corporation, for which act, he was issued with a charge memo, on 25.11.2017; an explanation was submitted on 22.12.2017 and at

the request of the petitioner only, final orders were passed on 23.03.2018. Since the petitioner was about to reach the age of superannuation in the year 2018, at his request only, without conducting enquiry, final orders were passed. However, the petitioner has an effective remedy of appeal to the first respondent within a period of 90 days from the date of final order. However, the petitioner filed the appeal only on 05.02.2020 before the first respondent appellate authority, which is beyond a period of limitation. In the writ petition filed by the petitioner in WP(MD) No.4435/2020, which was filed for disposing his appeal, a direction was issued to the respondents to consider the appeal petition filed by him. The respondents, pursuant to the said order of this Court, rightly considered the appeal and rejected the same on the ground that the appeal was filed beyond the period of limitation, ie., after 90 days, and the petitioner filed the appeal after a lapse of two years. Hence, the order is not stated to be illegal and no interference is warranted, it is contended.

5. The fact that the petitioner is working as Deputy Manager in the respondent Corporation and he was directed to engage 79 security staff,

which was subsequently reduced to 51 by the order of the Director are not disputed. The petitioner was issued with a charge memo stating that violating the order of the Director, the petitioner engaged more security staff, thereby caused financial loss to the respondent and hence, a final order came to be passed, wherein, he was imposed with a punishment of one stage reduction of basic pay.

6. The petitioner also sent representation on 30.11.2017 to sanction more number of security staff to an extent of 75 and the same was approved by the Managing Director on 02.12.2017. When the increased staff as sought for by the petitioner was approved by the Managing Director himself, this Court is at a loss to understand as to how the charge memo was issued to the petitioner for violation of the order of the Managing Director, wherein the staff was reduced from 82 to 51. The disciplinary authority, without considering the approval order dated 02.12.2017, mechanically arrived at a conclusion as if the petitioner has caused loss to the tune of Rs.15 lakhs to the respondent Corporation is not only illegal but also unsustainable.

7. In view of the aforesaid reason alone, the impugned order passed by the original authority, confirmed by the appellate authority is liable to be interfered with.

8. In the result, the writ petition is allowed and the impugned order is set aside. The respondents are directed to settle the eligible terminal and pensionary benefits to the petitioners. No costs. consequently connected Miscellaneous Petition is closed.

**23.01.2023**

NCC : Yes/No

Index : Yes/No

Internet : Yes

RR

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**M.DHANDAPANI, J.**

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