



W.P.(MD).No.19321 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.09.2023

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.19321 of 2023

and

W.M.P(MD)No.15990 of 2023

A.James

... Petitioner

Vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation,
(Kumbakonam) Limited, Kumbakonam,
Thanjavur District.

2.The General Manager,
Tamil Nadu State Transport Corporation,
(Kumbakonam) Limited,
Karaikudi Region,
Sivagangai District.

3.The Branch Manager,
Tamil Nadu State Transport Corporation,
(Kumbakonam) Limited,
Devakottai Branch,
Sivagangai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records in connection with the impugned order issued by 2nd respondent in



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TNSTC/KKD/DS-1895/ MIBO13/ D3-345/2021 dated 18.11.2022 and consequential Impugned Order issued by 1st respondent in TNSTC / KKD/ DS-1895/ MIBO13/ D3-345/2021, dated 28.06.2023 and quash the same as illegal.

For Petitioner : Mr.S.Bharathy Kannan

For Respondents : Mr.K.Jegadeesh Balan
Standing Counsel

ORDER

The present writ petition has been filed to call for the records in connection with the impugned order issued by 2nd respondent in TNSTC/KKD/DS-1895/ MIBO13/ D3-345/2021 dated 18.11.2022 and consequential Impugned Order issued by 1st respondent in TNSTC / KKD/ DS-1895/ MIBO13/ D3-345/2021, dated 28.06.2023 and quash the same as illegal.

2. The petitioner was appointed as Driver in the office of the 3rd respondent in 1993. He was placed under suspension vide order of the 2nd respondent on 23.12.2021. Two count of charges came to be framed against him vide charge memo, dated 23.12.2021. Thereafter, vide proceedings, dated 11.03.2022, the temporary suspension passed against the petitioner also came



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to be revoked without prejudice to the pending disciplinary proceedings.

Thereafter, an enquiry was conducted and on the basis of the enquiry report, vide memo of the 2nd respondent, dated 26.10.2022, the petitioner was imposed with the punishment of penalty of reduction of pay to minimum level of the driver category for 3 years and it was also ordered that a period of suspension would be treated as eligible leave at his credit.

3. Against which, the petitioner made an appeal to the 1st respondent and the 1st respondent passed an order on 28.06.2023 wherein the petitioner's punishment for reduction of pay to minimum level (Rs.19,300/-) was modified to reduction of pay to the next level (Rs.19,900/-). Challenging both the orders passed by the 2nd respondent, dated 18.11.2022 and by the 1st respondent on 28.06.2023, this writ petition came to be filed.

4. The learned Standing Counsel appearing for the respondents has filed a counter and submitted that the charges made against the petitioner are grave in nature and the petitioner had indulged in certain activities with an intention to defame and create bad name among public to the respondent corporation by damaging the bus himself and videographing the same in his cell phone and



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publishing the same in social media which went to the level of propagating the same in television across the State. The said activity was intentional and his conduct of intentionally damaging the bus door and thereafter, videographing the same and publishing the same with *mala fide* intention through social media has brought great disrespect to the respondent Corporation. The entire charges are based on the eye witness, namely K.Anand and hence, the impugned order need not be interfered and pressed for dismissal of the writ petition.

5. Heard the learned counsels on either side and perused the materials available on record.

6. The clear perusal of the record would reveal that the sole eye witness one K.Anand was not at all examined in the enquiry conducted by the respondent corporation in the disciplinary proceedings, except producing a piece of paper claiming to be the statement of the said eyewitness. There was no substance which could substantiate the alleged misconduct on the part of the petitioner for having conducted himself in damaging the bus belonging to the respondent corporation and propagating the same in social media. It is pertinent to mention here that the respondent corporation had no substance even to prove



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the written submission claimed to have been made by K.Anand. That apart, the impugned order of punishment came to be passed as against the petitioner while he was at the verge of retirement on 31.08.2023, which is just 2 months before his date of superannuation. Moreover, the punishment imposed in both the impugned orders by the respondents 1 and 2 respectively are not based on any regulation or statutes governing the employees of the respondent corporation and hence, the same has been passed without any authority of law.

7. This matter is no more *res integra*. This Court has already dealt with similar matter in W.P)(MD)No.6174 of 2009, dated 23.03.2018 and the relevant portion of which is extracted hereunder:

“11. However, this Court is of the considered view that the regularisation of suspension period of an employee depends upon various factors and adjustment of leave to his credit during the period of suspension is one of the methods of regularization of suspension period. Therefore, this cannot be considered as one of punishment. But at the same time, the imposition of punishment of reduction in pay, is not provided for in the service regulations and therefore, such imposition of penalty cannot be countenanced both in law and on facts.”



8. In another case dealt with by this Court in W.P(MD)No.3039 of 2020, dated 16.03.2020, the learned Single Judge of this Court has passed a favourable order to the petitioner therein and the relevant portion of which is extracted as follows:

7.In the decision cited by the learned counsel for the petitioner, M.Sankar vs. Tamilnadu State Transport Corporation (Villupuram) Ltd., (W.P.No.6174 of 2009 dated 23.03.2018), while quashing the similar order of punishment challenged therein, imposing the punishment of reduction in pay, this Court, after considering the punishments for misconduct as provided in the Service Rules, has held that that above punishment is not provided in the Service Rules and therefore, such imposition of punishment is without the authority of law.....”

9. However, it is significant to extract the punishment for misconduct provided under clause 25 of the Standing Orders for the employees of the respondent corporation and the same is as follows:

“25) Punishment of Misconduct

1. The following shall be the prescribed punishment that may be awarded to workman. Guilty of misconduct.

(i) Censure

(ii) Fine : Subject to the provisions of payment of wages Act.



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(iii) Stoppages of increment: *Stoppage of increment with or without cumulative effect.*

(iv) a. *Recovery from wages whole or part of any pecuniary loss, caused to the corporation by the negligence or breach of orders of the workmen.*

b. *Recovery from pay to the extent necessary of the monetary value equivalent to the amount of increment ordered to be withhold, where such and order cannot be given effect to.*

c. *Recovery from pay to the extent necessary of the monetary value equivalent to the amount of reduction to a lower stage in a time scale ordered where such an order cannot be given effect to.*

v. *Demotion to lower post or lowere grades. No workmen shall be demoted to any post or grades lower than to which he was initially recruited under the corporation.*

vi. *Suspension not exceeding 30 days*

vii. *Compulsory retirement*

viii. *Removal from service or discharge.*

ix. *Dismissal from service*

x. *Any of the above in case of accidents where driver is found to be guilty.”*

10. The punishment of reduction of pay to the minimum level of driver category for 3 years and the punishment of modification of reduction of pay to



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the next level is nowhere provided in the punishment for misconduct as mandated in the standing orders. Hence, the imposition of punishment of reduction in pay which is not provided for in the service regulation is *per se* illegal. Therefore, such imposition of penalty cannot be countenance both in law and in facts. Hence, in view of the same, this Court is inclined to quash both the impugned orders, dated 18.11.2022 passed by the 2nd respondent and the order passed by the 1st respondent on 28.06.2023.

11. Hence, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

08.09.2023

NCC : Yes/ No
Index : Yes/No
Internet : Yes/No
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L.VICTORIA GOWRI, J.

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