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W.P.(MD)No.22026 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.22026 of 2017

Sheik Mohammed Ali

... Petitioner

vs.

1.The Managing Director,
Tamilnadu State Transport Corporation,
Madurai Limited,
Bye-Pass Road, Madurai District.

2.The General Manager,
Tamilnadu State Transport Corporation,
Madurai Limited,
Madurai Region, Bye Pass Road,
Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records from the 1st respondent in the impugned order passed in



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Ref.D.A.C/D3/Usillai/1649, dated 13.07.2017 and to quash the same and further, to direct the 1st respondent to reinstate the petitioner into service with back wages and continuity of services.

For Petitioner : Mr.K.Gokul

For Respondents : Mr.J.Senthil Kumaraiah

ORDER

This writ petition is filed for writ of Certiorarified Mandamus, to quash the impugned order, dated 13.07.2017 passed by the 1st respondent and to direct the 1st respondent to reinstate the petitioner into service with backwages and continuity of services.

2. The brief facts of the case are that the petitioner has studied Diploma in Mechanical Engineering in the year 1985. On the basis of this qualification, the petitioner joined as an apprentice in the cadre of



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Junior Engineer in the respondent corporation on 10.09.1987 and his service was regularized with effect from 21.09.1989. Thereafter, he was promoted as Assistant Engineer and Senior Assistant Engineer and he was continuing in the service.

3.The contention of the petitioner is that while he was in service, after conducting enquiry, the 2nd respondent without getting objections has dismissed the petitioner from service on 26.02.2016. Hence, the petitioner has submitted a representation, dated 11.04.2017. The respondents did not consider the petitioner's representation and did not consider the pathetic situation of the petitioner. Hence, he filed W.P. (MD)No.8738 of 2017 and this Court directed the respondents to consider and pass orders. Based on the order passed by this Court, the present impugned order is passed.



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4.The further contention of the petitioner is that the enquiry was not conducted by following the principles of natural justice. The petitioner is in higher rank but the person who was appointed as enquiry officer was holding a post lesser in rank than the petitioner. The petitioner was working as Senior Assistant Engineer whereas, the enquiry officer namely, M.Murthy was holding the post of Senior Assistant. Since the enquiry officer is junior to the petitioner, the petitioner contended that the enquiry was not conducted properly. Moreover, the petitioner has submitted that he took leave for ten days due to family circumstances and he was mentally not fit to attend the job because of the stress and strain he was undergoing in his family. The respondents have not considered the same but the respondents have passed the impugned order dismissing the petitioner from service. Aggrieved over the same, the petitioner has submitted a fresh representation to reconsider but the respondents



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present impugned order is passed. Therefore, there is no illegality in the impugned order to interfere with it. Hence, the respondents prayed to dismiss the writ petition.

6. Heard Mr.K.Gokul, learned Counsel appearing for the petitioner and Mr.J.Senthil Kumaraiah, learned Counsel appearing for the respondents and perused the records.

7. It is seen from the records that after the order is passed, the petitioner has submitted to reconsider the punishment and the same ought to have been considered as an appeal submitted to the appellate authority. The respondents have not considered the same. Hence, the petitioner has approached this Court to reconsider the petitioner's request. After reconsideration, the respondents have passed the impugned



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order without citing any reasons. The appellate authority is supposed to consider the appeal and pass a speaking order. In the present case, the respondents have failed to do so. It is seen from the records that the petitioner has rendered service from 21.09.1989 until he was dismissed from service, i.e., 26.02.2016 and he has served for more than 26 years. However, it is seen that the petitioner had unauthorizedly absented for more than 800 days from 2011 to 2016. Therefore, the petitioner ought to be considered for his long service and imposed reasonable punishment.

8. Hence, this Court is inclined to interfere in the punishment. The order of dismissal from service is modified as compulsory retirement. The petitioner's service from 21.09.1989 until 31.12.2012. shall be taken as the period of service. Thereafter from 01.01.2013 to 26.02.2016, 50% of the service shall be taken. The respondents are directed to pay the



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pensionary benefits applicable to the above said service period. The impugned order is quashed to an extent as stated above. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

9. With the above said observation, the writ petition is allowed.

No costs.

Index : Yes / No

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Internet : Yes

NCC : Yes / No

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