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Writ Appeal No.396 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.01.2024

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal No.396 of 2021
and C.M.P.No.1577 of 2021**

1. The General Manager,
Tamil Nadu State Transport Corporation
(Coimbatore Divisino – II) Ltd.,
Erode Region, Chennimalai Road,
Erode – 638 001.

2. The Manager Director,
Tamil Nadu State Transport Corporation
(Coimbatore Division – II) Ltd.,
Erode Region, Chennimalai Road,
Erode – 638 001.

... Appellants

Vs.

1. Krishnaveni
2. Anbuselvi
3. Pramila
4. Kamakshi
5. The Secretary to Government,
Transport Department, Secretariat,
Chennai – 600 009.

.. Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order passed in W.P.No.15731 of 2008 dated 02.11.2018.

For Appellants : Mr.M.Murali Vinodh, Standing



Writ Appeal No.396 of 2021

Counsel
For Respondents : Mr.V.K.Bhuvaneshwar [R1 to R4]
Mr.R.Kumaravel,
Additional Govt. Pleader [R5]

JUDGMENT

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

This writ appeal has been directed against the order passed by the Writ Court dated 02.11.2018 made in W.P.No.15731 of 2008

2.That the first respondent Natarajan deceased was an employee of the appellant Transport Corporation, against whom a disciplinary proceedings was initiated for the unauthorized absence of two months. Subsequently, based on the medical certificate, though he had been permitted to join the duty and had been working for some years, in the meanwhile, since such a permission was given without prejudice to the disciplinary proceedings to be initiated against him, such a disciplinary proceedings had been initiated and a show cause notice had been issued, based on which enquiry was conducted, where the employee could not appear, therefore an *ex-parte* order was passed, based on which, the disciplinary authority had inflicted the punishment of dismissal from



service against the first respondent/employee on 27.06.1994.

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3. As against which, though appeal had been filed, which has become unsuccessful, therefore, he had moved the said writ petition to set aside the said punishment dated 27.06.1994 and seek for reinstatement.

4. The said writ petition was heard and decided by the learned Judge through the impugned order dated 02.11.2018, where the learned Judge found that the punishment of removal of service inflicted against the employee for the alleged unauthorized absence of two months period is too harsh and disproportionate, therefore, it should be modified, accordingly, the learned Judge in the order impugned had modified the punishment of removal from service into compulsory retirement and since the employee had already rendered 14 years of service that shall be calculated as a qualifying service under the Rule 13(a) of the TNSSTC Employees' Pension Fund rules and it can be taken into account and therefore, the employee was entitled for the pensionary benefits.

5. Aggrieved over the said order passed by the Writ Court, the present appeal had been directed.



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6. Assailing the said order passed by the Writ Court, Mr.M.Murali Vinodh, learned Standing Counsel appearing for the Transport Corporation would contend that, even assuming that the modified punishment as has been given by the Writ Court is accepted without admitting the same for the sake of argument, even then the employee since has not completed the 10 years qualifying service as out of 14 years of total service before termination, he did not have the qualifying service of minimum 10 years period, therefore he would not at all entitled for any pensionary benefits.

7. He would also submit that, at the time when he was working before 1994, the contribution could not have been made to the pension fund because the pension fund was not introduced at the time, therefore, on that ground also, the direction given by the learned Judge to take into account the qualifying service under Rule 13(a) of the TNSTC Employees' Pension Fund Rules cannot be countenanced as the said Rule cannot be made applicable to the said employee. Therefore, for all these reasons, the order passed by the Writ Court including the direction given therein cannot be sustained, therefore, the learned counsel seeks



indulgence of this Court against the impugned order.

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8. We have heard Mr.V.K.Bhuvaneshwar, learned counsel appearing for the respondent/employee, as the first respondent/employee since deceased the other respondents have already been impleaded in the writ petition itself as the legal heirs of the original writ petitioner i.e, deceased Natrajan. He would also submit that insofar as the argument advanced by the appellant side that within 14 years, the employee did not have the 10 years qualifying service is concerned, during the said period of 14 years of service if at all any punishment had been awarded earlier as a minor punishment that has been undergone by the employee, therefore, during that period, since he had undergone the punishment it cannot be stated that those period cannot be calculated for the purpose of qualifying service of minimum 10 years for making the payment of pension under the scheme, which was prevailing then.

9. We have considered the said submission made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

10. Insofar as the punishment of removal of service is concerned, as has been pointed out by the learned Judge in the impugned order it is



not proportionate to the alleged violation i.e., two months unauthorized absence. It is further to be noted that, after the period of two months absence, for which, when medical certificate was given, which was *prima facie* accepted, therefore the employee was permitted to rejoin the duty. If at all any unauthorized absence are found or noticed against the employee, for which disciplinary proceedings are initiated, normally the employer would not accept for rejoining the duty. Here, he was permitted to rejoin the duty and had been working for some time, thereafter in the enquiry also it seems to have an *ex-parte* enquiry.

11. Be that as it may. The punishment of removal of service inflicted against him on 27.06.1994 has been factually found disproportionate by the learned Judge and accordingly, a modified punishment of compulsory retirement had been directed to be inflicted against him, which in the considered opinion of us cannot be said to be a flawed or unsustainable one.

12. It is a settled proposition that, if punishment awarded by any disciplinary authority shocks the conscience of the Court based on the



facts of such case, that the Court can interfere with the proportionality, therefore, the learned Judge in that context only had interfered with the proportionality of the punishment and that approach of the Writ Court cannot be found fault with.

13. Now, we are coming to the benefits, for which, the respondents i.e., the legal heirs of the original employee are entitled to is concerned, though the learned Judge has referred to Rule 13(a) of the TNSTC Employees' Pension Fund Rules, it has been argued by the learned counsel appearing for the Transport Corporation that, at the relevant point of time i.e., before 1994, there was no such fund rules, therefore under the said rule, the employee or the legal heirs of the employee are not entitled to seek for any pensionary benefits.

14. Assuming that at that time the Pension Fund Rules was not made applicable to the employee like the deceased one, at that time there has been a scheme for the employees with regard to the pension and in that scheme, contribution compulsorily had been made by every employee as well as by the employer, therefore based on which, the scheme still continues for those employees, who are not covered under



Writ Appeal No.396 of 2021

the pension fund rules, therefore, accordingly, what was the eligibility of the employee, who had service till 1994 for getting the pensionary benefits as per the scheme, which was in vogue at the relevant point of time, can be taken into account and accordingly, whatever the pension benefits that can be calculated be paid to the legal heirs of the employee, who are the present respondents in this appeal.

15. In that view of the matter, we are inclined to dispose of this writ appeal with the following orders:

- ◆ That the impugned order passed by the learned Judge is to be sustained, accordingly, it is sustained.
- ◆ As a result of which, there shall be a direction to the appellant to calculate the pensionary benefits payable to the deceased employee or to their legal heirs, who are the present respondents as per the then existing pension scheme, if not under Rule 13(a) of the TNSTC Employees' Pension Fund Rules and accordingly, the same shall be paid to them within a period of three(3) months from the date of receipt of a copy of this order.

With these directions, this Writ appeal is disposed of. No costs.



Writ Appeal No.396 of 2021

Connected miscellaneous petition is closed.

WEB COPY

(R.S.K.,J.)

(K.B., J.)

24.01.2024

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation:Yes/No

mp

To

The Secretary to Government,
Transport Department, Secretariat,
Chennai – 600 009.



WEB COPY



Writ Appeal No.396 of 2021

R.SURESH KUMAR., J.
and
K.KUMARESH BABU.,J.

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Writ Appeal No.396 of 2021

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