



W.P.(MD).Nos.26271 to 26274 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.02.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).Nos.26271 to 26274 of 2023

In all petitions:

A.Somasundaram

... Petitioner

Vs

1. The Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Rep. by its Managing Director,
Kumbakonam.
2. The General Manager,
The Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Pudukottai Region, Pudukottai.
3. The Administrator,
The Tamil Nadu State Transport Corporation
Employees Pension Fund Trust,
Thiruvalluvar Illam,
Pallavan Salai,
Chennai-600 002.

... Respondents

Common Prayer in WP(MD)Nos.26271 & 26273 of 2023: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned orders passed by the 2nd respondent in Ref.No.TNSTC /



W.P.(MD).Nos.26271 to 26274 of 2023

PUD/DS-/1955 / AEMO57/D2-226/2022, dated 28.06.2022, TNSTC / PUD/DS-/1953 / AEMO57/D2-224/2022, dated 30.06.2022 respectively as confirmed by the 1st respondent in Ref. No. TNSTC / KUMBA / PUDU / DS/D2/226/2022, TNSTC / KUMBA / PUDU / DS/D2/224/2022, dated 21.01.2023 respectively in imposing the punishment of stoppage of petitioner's next annual increment for a period of three months with cumulative effect, quash the same and consequently direct the respondents to quantify and pay the difference in salary and difference in terminal benefits to the petitioner together with interest at 6 % per annum from the date of his retirement to till the date of disbursement.

Prayer in WP(MD)Nos.26272 of 2023: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 2nd respondent in Ref.No.TNSTC / PUD/DS-/1971 / AEMO57/D2-234/2022, dated 19.07.2022 as confirmed by the 1st respondent in Ref. No. TNSTC / KUMBA / PUDU / DS/D2/234/2022 dated 21.01.2023 in imposing the punishment of stoppage of petitioner's next annual increment for a period of three months with cumulative effect, quash the same and consequently direct the respondents to treat the period of suspension from 24.05.2022 to 06.06.2022 as duty wages and further directing the respondents to quantify and pay the difference in salary and difference in terminal benefits to the petitioner together with interest at 6 % per annum from the date of his retirement to till the date of disbursement.

Prayer in W.P(MD)No.26274 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned orders passed by



W.P.(MD).Nos.26271 to 26274 of 2023

the 2nd respondent in Ref.No.TNSTC / PUD/DS-/1925 / AEMO57/D2-225/2022, dated 30.06.2022 as confirmed by the 1st respondent in Ref. No. TNSTC / KUMBA / PUDU / DS/D2/225/2022 dated 21.01.2023 in imposing the punishment of stoppage of petitioner's next annual increment for a period of three months with cumulative effect, quash the same and consequently direct the respondents to refund Rs.6,000/- recovered from the petitioner towards Non implemented punishment of stoppage of increment and to quantify and pay the difference in salary and difference in terminal benefits to the petitioner together with interest at 6 % per annum.

For Petitioner : Mr. A.Rahul

For Respondents : Mr.K.Jegadeesh Balan (R1,R2)

Mr.S.C.Herold Singh (R3)
Standing Counsels

COMMON ORDER

The present writ petitions have been filed challenging the impugned orders passed by the 2nd respondent as confirmed by the 1st respondent, dated 21.01.2023.

2.The petitioner joined the first Respondent Corporation as a Junior Tradesman with effect from 23-01-1987. After periodical promotions, he reached the level of Assistant Engineer and after rendering 36 years of service, he retired from the post of Assistant Engineer with effect from



W.P.(MD).Nos.26271 to 26274 of 2023

30.06.2023. While on service, he was visited with four charge memos. The first two charge memos were dated 16.05.2022 in which, two charges / three charges were framed against the petitioner respectively and the third charge memo, dated 13-05-2022 and fourth charge memo, dated 23-05-2022 came to be served upon the petitioner. As far as the third charge memo is concerned, one charge was framed as against the petitioner and 4th charge memo is concerned, 3 charges were framed as against the petitioner. The Petitioner submitted his explanations for all the charge memos, with which he was visited. However, no enquiry was conducted by the disciplinary authority with respect to any of the charge memos. Thereafter, the second respondent held all the charges to be proved and a punishment of stoppage of annual increment for a period of 3 months with cumulative effect came to be passed by the second respondent in each of the 4 charge memos separately.

(ii).As against the same, the petitioner preferred appeals on various dates before the first respondent. However, without considering the explanation and without considering the appeals preferred by the petitioner, by means of a cryptic and non-speaking order, all the four appeals preferred by the petitioner were rejected on 21.01.2023. The details as to the various charge memos are extracted as follows:



W.P.(MD).Nos.26271 to 26274 of 2023

S. No	W.P (MD) No.	Date of charge memo	No. of charges	Date of Explanation	Enquiry whether conducted	Impugned decision of 2 nd respondent	Punishment	Date of Appeal	Impugned decision in appeal
1	26871 /2023	16.05.2022 Not suspended	2	Nil	No	Charges held proved on 28.06.2022	Stoppage of annual increment for a period of 3 months with cumulative effect	09/10/2022	Appeal rejected on 21.01.2023
2	26872 /2023	23.05.2022 suspended on 23.5.2022 to 6.6.2022	2	27.05.2022	No	Charges held proved on 14.07.2022	(i).Stoppage of annual increment for a period of 3 months with cumulative effect (ii).Period of suspension from 24.05.2022 to 06.06.2022 treated as eligible leave	19/09/2022	Appeal rejected on 21.01.2023
3	26873 /2023	13.05.2022 Not suspended	1	24.05.2022	No	Charges held proved on 30.06.2022	Stoppage of annual increment for a period of 3 months with cumulative effect	19/09/2022	Appeal rejected on 21.01.2023
4	26874 /2023	16.05.2022 Not suspended	3	01.07.2022	No	Charges held proved on 30.06.2022	(i).Stoppage of annual increment for a period of 3 months with cumulative effect (ii).Recovery of Rs. 6,000/- from salary towards uneffected punishment of stoppage of increment since he was due to retirement w.e.f.30.06.2023	19/09/2022	Appeal rejected on 21.01.2023

(iii).Challenging the impugned orders of punishment passed by the second respondent in each of the charge memos and the rejection of the appeals



W.P.(MD).Nos.26271 to 26274 of 2023

with respect to each of the charge memos, four writ petitions came to be filed and all the four writ petitions are dealt with herein together.

3.Heard, Mr. A.Rahul, the learned counsel appearing for the petitioner, Mr. Jagadish Balan the learned Standing Counsel for the respondents Corporation and carefully perused the materials available on record.

4.The submission of the learned counsel for the petitioner is that the penalty of stoppage of increment with cumulative effect for three months is a major penalty and therefore, in the very nature of things, enquiry must have been conducted and without conducting an enquiry, the impugned orders of punishment came to be passed. The appeals submitted by the petitioner before the first respondent also came to be rejected vide orders, dated 21.01.2023 without any explanation, without any elaborate discussion and the same is a non-speaking and cryptic order. In view of the same, prayed for allowing the writ petitions, by quashing the impugned orders.



W.P.(MD).Nos.26271 to 26274 of 2023

5.Per contra, the learned Standing counsel for the Respondents Corporation submitted that the Standing Orders for the employees of the Respondent Corporation do not provide for conduct of enquiry, as far as the visitation of charge memos are concerned. Only on that basis, enquiry was not conducted and that apart, the imposition of punishment of stoppage of annual increment for a period of 3 months, is a punishment for which, enquiry is not mandated in terms of Standing Orders. Hence, there is no infirmity in the decision taken by the respondents authorities and prayed for dismissal of the writ petitions.

6.The question of non-conduct of enquiry in disciplinary proceedings before the transport Corporation has been dealt with by this Court in a similar case in W.P(MD)No.17463 of 2014 and a learned Single Judge of this Court has passed an order favourably to the petitioner therein. The relevant portion is extracted hereunder:

“7.The pointed contention raised by the learned counsel for the respondent is that the penalty imposed on the petitioner falls



W.P.(MD).Nos.26271 to 26274 of 2023

within the clause 25(1)(iii) of the standing order. Since it has been specifically stated that enquiry is not necessary in cases involving minor punishment defined in items (i) to (iv) of S.O.25, the submission of the writ petitioner is liable to be rejected. I am not persuaded to accept the said argument. Clause 26(vi) of S.O. only states that in cases involving major punishment defined in items (vi) to (ix) of S.O.25 enquiry shall be conducted if so desired by the workman. Clause 26(vi)(b) states that no such enquiry will be necessary in cases involving minor punishment defined in items (i) to (iv) of S.O.25. The said clause only states that such enquiry will not be necessary in cases involving minor punishment defined in items (i) to (iv). There is no specific prohibition or exclusion of holding of enquiry even in cases falling under clause 26(vi)(b). Since stoppage of increment having cumulative effect is having an impact on the pay of the workman till the retirement and even thereafter on his pension, one has to necessarily come to the conclusion that it is a major penalty. This court can take judicial notice of the fact that in the discipline and appeal rules governing employees in all other departments, such a penalty is construed only as a major punishment. Fairness requires that enquiry is conducted in such cases. Even though standing orders in question would take the position that enquiry is not necessary, this Court is inclined to read the principles of natural justice into the said provision.”



W.P.(MD).Nos.26271 to 26274 of 2023

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7. In the instant *lis*, the petitioner retired from the post of Assistant Engineer with effect from 30.06.2023. However, all the four writ petitions filed herein are with respect to those charge memos issued on various dates in the year, 2022, while he was in service. Despite the petitioner submitting proper explanations for all the three charge memos, the disciplinary authority, i.e., the second respondent, without conducting an inquiry or giving an opportunity of hearing to the petitioner, proceeded to conclude with the disciplinary proceeding by deciding as against the petitioner and held all the charges with respect to all the four charge memos as proved. The petitioner duly preferred appeals, i.e., four appeals on 19.09.2022 and 09.10.2023 with respect to all the four impugned orders of punishment passed by the second respondent before the first respondent. However, all the four appeals came to be rejected by the first respondent vide impugned orders, dated 21.01.2023.

8. That apart, as far as the charge memo dated 23.05.2022, the petitioner was suspended for the same with effect from 23.05.2022 and was placed under suspension till 06.06.2022. The second respondent in the impugned order has treated the period of suspension from 24.05.2022 to



W.P.(MD).Nos.26271 to 26274 of 2023

06.06.2022 as eligible leave. However, the same is contrary to the service rules, which stipulates in the event of imposing punishment of stoppage of increment with cumulative effect, suspension shall be treated as duty period with wages.

9. In addition to that, as far as the charge memo, dated 16-05-2022, the respondents had recovered an amount of Rs.6,000/- from the petitioner's salary, towards uneffected punishment of stoppage of increment since he was due to retire with effect from 30.06.2023 at the time of the disciplinary proceedings. The petitioner attained the age of superannuation on 30.06.2023 and he was allowed to retire peacefully. However, it is needless to state that the effect of the imposition of punishment of annulment of annual increment for a period of three months with cumulative effect would certainly impact on the pay of the petitioner, till the retirement and even thereafter, on his pension. In this case, the petitioner has already retired on 30.06.2023 and the effect of the punishment implemented by the disciplinary authority vide the impugned orders has impacted seriously with the service benefits as well as the retirement benefits of the petitioner.



W.P.(MD).Nos.26271 to 26274 of 2023

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10.Thus, in the facts and circumstances of these cases, non-conduct of enquiry in the case of all the four charge memos in the instant cases would amount to violation of principles of natural justice. Fully fortified by the order passed by this Court in WP(MD) No. 17463 of 2014, dated 18.01.2018, wherein, this Court held that though the Standing Orders of the Corporation would take the position that enquiry is not necessary, this Court is inclined to read the principles of natural justice into the said provision and on that basis, I am inclined to observe that the principles of natural justice ought not to have been violated by the second respondent, by not giving an opportunity of hearing to the petitioner by conduct of a proper enquiry and thereby, quash the impugned orders of punishment.

11.In view of the same, this Court hereby quashes the impugned orders in all the four writ petitions passed by the 2nd respondent in Ref.No.TNSTC / PUD/DS-/1955 / AEMO57/D2-226/2022, dated 28.06.2022, TNSTC / PUD/DS-/1971 / AEMO57/D2-234/2022, dated 19.07.2022, TNSTC / PUD/DS-/1953 / AEMO57/D2-224/2022, dated 30.06.2022, TNSTC / PUD/DS-/1925 / AEMO57/D2-225/2022, dated 30.06.2022 respectively and as confirmed by the 1st respondent in Ref. No. TNSTC / KUMBA / PUDU /



W.P.(MD).Nos.26271 to 26274 of 2023

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DS/D2/226/2022, TNSTC / KUMBA / PUDU / DS/D2/234/2022, TNSTC / KUMBA / PUDU / DS/D2/224/2022, TNSTC / KUMBA / PUDU / DS/D2/225/2022, dated 21.01.2023 are hereby quashed. Accordingly, all the four writ petitions are allowed. There shall be no order as to costs.

12.02.2024

NCC : Yes / No
Index : Yes / No
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W.P.(MD).Nos.26271 to 26274 of 2023

L.VICTORIA GOWRI, J.

PNM

**COMMON ORDER IN
W.P.(MD).Nos.26271 to 26274 of 2023**

12.02.2024



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W.P.(MD).Nos.26271 to 26274 of 2023