



W.P.No.14522 of 2012

WEB COPY **IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 14.03.2025

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.14522 of 2012

N.Suresh Kumar

... Petitioner

Vs

1.Tamil Nadu State Transport Corporation (Coimbatore) Ltd,
Rep by its Managing Director,
Appellate Authority,
No.37, Metupalayam Road,
Coimbatore – 43.

2.The Additional Managing Director,
(Formerly Mahakavi Bharathiyar
Transport Corporation, Udhagamandalam),
Presently Tamilnadu State Transport
Corporation (Coimbatore) Ltd,
Coimbatore Region,
37, Mettupalayam Road,
Coimbatore – 43.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the order of dismissal dated 10.10.1995 passed by the 2nd respondent in Proceedings No.1/Oo.Na.1/282/BTC/95 imposing the petitioner the punishment of termination of service with effect from



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20.09.1995 and treating the period from 21.01.1995 to 26.04.1995 as absence and the order dated 25.01.2011 passed by the 1st respondent in Proceedings No.1/L2/Ni.Pe.25158/2010/TNSTC/10 rejecting the petitioner's appeal and confirming the order of termination from service, quash the same and consequently direct the respondents to reinstate him with continuity of service, backwages and all other attendant benefits.

For Petitioner : Ms.H.Nandhini
for Mr.R.Krishnaswamy
For Respondents : Mr.S.Logesh
for Mr.A.Sundaravadhanam
Standing Counsel

ORDER

In this Writ Petition, the Petitioner has challenged the Order dated 25.01.2011 (hereinafter referred to as the 'Impugned Order') passed by the 1st Respondent affirming the Punishment Order dated 10.10.1995 passed by the 1st Respondent.

2. By the Impugned Punishment Order dated 10.10.1995, the 2nd Respondent terminated the service of the Petitioner on account of unauthorised absence between 21.01.1995 and 26.04.1995. Initially, the Petitioner was also absent from 11.01.1995 due to the illness of his wife.

3. According to the learned counsel for the Petitioner, the



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Petitioner's wife suffered from heart attack and had peptic ulcer which led to high BP and therefore the Petitioner had to take leave due to his wife's deteriorating health condition.

4. It is the case of the Petitioner that the Petitioner had sent repeated requests for extending the leave. However, the leave request from 06.02.1995 to 12.02.1995 was denied vide letter dated 08.02.1995 by the Respondent management and was asked to immediately report for work. Since the Petitioner was absent between 21.01.1995 and 26.04.1995, the Petitioner was issued with a Show Cause Notice dated 15.02.1995.

5. It is the further case of the Petitioner that however pursuant to Order dated 26.04.1995, the Petitioner was also allowed to join duty on 27.04.1995. However, in the meanwhile, it appears that the Petitioner was proceeded with disciplinary proceedings and thereafter an Enquiry was also conducted which led to the Dismissal Order dated 10.10.1995.

6. Meanwhile, the Petitioner had also raised an Industrial Dispute



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before the Industrial Tribunal in I.D.No.231 of 1996, wherein, the above I.D.No.231 of 1996 was dismissed vide Order dated 14.07.2000 holding that the Petitioner was not a workmen under the Act. The Petitioner had unsuccessfully challenged the Order dated 14.07.2000 before this Court in W.P.No.5978 of 2001 which was dismissed as withdrawn on 19.07.2010 to file an appeal before the 1st Respondent.

7. It is in this background, the 1st Respondent has now passed the Impugned Order dated 25.01.2011. The Impugned Order dated 25.01.2011 of the 1st Respondent merely records the submissions and states that the Petitioner has not made out a case, thereby affirming the Punishment Order dated 10.10.1995 of the 2nd Respondent.

8. The learned counsel for the Petitioner would submit that even if the Petitioner is guilty of the misconduct as per the Charge Memo dated 15.02.1995, the punishment of dismissal from service was disproportionate to the alleged misconduct of the Petitioner.

9. That apart, the learned counsel for the Petitioner would submit



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that the Petitioner had put in service since the year 1988 as a 'Junior Engineer' and was promoted as a 'Superintendent' in the Respondent Corporation.

10. Adding further, the learned counsel for the Petitioner would submit that the Petitioner was forced to avail leave as the Petitioner's wife was unwell and therefore, the Petitioner was required to be present with her and therefore required medical leave.

11. It is further submitted by the learned counsel for the Petitioner that although the Petitioner's explanation was accepted and the Petitioner was allowed to join duty on 27.04.1995, the Petitioner was compelled to take another spell of leave between May 1995 to September 1995, as the Petitioner's wife's health conditions did not improve and the Petitioner was required to take care of her.

12. It is submitted by the learned counsel for the Petitioner that the Petitioner was a 'Junior Engineer' on 01.01.1988 and was thereafter promoted as a Superintendent when the first Charge Memo dated



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15.02.1995 was issued. It is submitted that having accepted the explanation, the Respondents dropped the proceedings initiated by the first Charge Memo dated 15.02.1995. It is submitted that however, the Petitioner was dismissed from service vide Order dated 10.10.1995 without issuance of a fresh Charge Memo to the Petitioner.

13. Further, it is submitted by the learned counsel for the Petitioner that the 1st Respondent as an appellate authority dismissed the Appeal filed by the Petitioner vide Impugned Order dated 25.01.2011 without any reasoning.

14. It is therefore submitted by the learned counsel for the Petitioner that the Impugned Order dated 25.01.2011 of the 1st Respondent is cryptic and therefore liable to be set aside. It is submitted that the Petitioner has served from 01.01.1988 till 14.01.1995 without any blemish and that reasons for being absent was only on account of illness of his wife.

15. The learned counsel for the Petitioner would further submit that



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question whether the absence was unauthorised or not and whether it would amount to failure of devotion to duty and the behaviour unbecoming of a Government Servant cannot be decided without deciding the question whether the absence of the Petitioner is wilful and without any compelling circumstances.

16. It is further submitted by the learned counsel for the Petitioner that in this case, admittedly, the Punishment Order dated 10.10.1995 issued against the Petitioner was passed without issuance of any Charge Memo against the Petitioner and without giving an opportunity of hearing to the Petitioner.

17. On the other hand, the learned Standing Counsel for the Respondents would submit that Impugned Order dated 25.01.2011 passed by the 1st Respondent affirming the Punishment Order dated 10.10.1995 passed by the 1st Respondent are well reasoned and do not warrant any interference under Article 226 of the Constitution of India.

18. The learned Standing Counsel for the Respondents further



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submits that no procedure illegality has been committed by the Respondents both while passing the Punishment Order dated 10.10.1995 and while dismissing the Appeal vide Impugned Order dated 25.01.2011.

19. It is submitted by the learned Standing Counsel for the Respondents that the Petitioner had taken long leave from 14.01.1995 to 25.04.1995 and thereafter was allowed to join duty on 27.04.1995. However, the Petitioner absented himself again from May 1995 and therefore the 2nd respondent had no other option but to terminate the service of the Petitioner after holding enquiry pursuant to Charge Memo dated 15.02.1995.

20. Therefore, the learned Standing Counsel for the Respondents prays for dismissal of the present Writ Petition.

21. I have considered the arguments advanced by the learned counsel for the Petitioner and the learned Standing Counsel for the Respondents and also perused the materials available on records.

22. Admittedly, the Petitioner was guilty of the Charges framed



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against the Petitioner vide Charge Memo dated 15.02.1995 for wilful absence from duty between 21.01.1995 and 26.04.1995. However, the explanation of the Petitioner was also accepted by the Respondent and thereafter the Petitioner was allowed to join duty on 27.04.1995. The Petitioner however, absented himself again between May 1995 to September 1995.

23. The Respondents thereafter proceeded to pass the Impugned Punishment Order dated 10.10.1995 pursuant to the Petitioner's absence from May 1995 to September 1995 without any issuance of a fresh charge memo. The facts on record reveal that the punishment to the Petitioner was awarded vide Impugned Orders based on the Charge Memo dated 15.02.1995 in lieu of the absence of the Petitioner for the period mentioned above.

24. The Petitioner approached this Court in W.P.No.5978 of 2001 challenging the aforesaid Punishment Order dated 10.10.1995. This Court had granted liberty to the Petitioner to file an appeal before the 1st Respondent vide Order dated 19.07.2010 while disposing the Writ



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Petition in W.P.No.5978 of 2001.

25. It is pursuant to the aforesaid Order dated 19.07.2010 of this Court in W.P.No.5978 of 2001, the Petitioner filed an Appeal before the 1st Respondent. Thereafter, the Petitioner had filed the Writ Petition in W.P.No.25158 of 2010 for disposal of the Appeal filed by the Petitioner before the 1st Respondent which came to be disposed by this Court vide Order dated 08.11.2010.

26. Pursuant to which the 1st Respondent disposed of the Appeal filed by the Petitioner vide Impugned Order dated 25.01.2011. However, the Petitioner has filed the present Writ Petition only on June, 2012 which is almost 1 ½ years after the passing of the Impugned Order dated 25.01.2011.

27. The Writ Petition ought to have been dismissed on the ground of delay and laches at the time of admission. However, it has been allowed to remain on the file of this Court. It is noticed that after it was admitted on 07.06.2012, the case has been adjourned from time to time at the



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request of the learned counsel for the Petitioner and the learned counsel for the Respondent and has been finally heard only today i.e., on 14.03.2025.

28. The fact remains that the entire disciplinary proceedings which was initiated with the issuance of the Charge Memo dated 15.02.1995 actually terminated on 26.04.1995 before the Order could be passed in the disciplinary proceedings initiated with the issuance of the charge memo dated 15.02.1995 and thereafter the Petitioner was allowed to join duty on 27.04.1995. However, the Petitioner absented himself once again between May 1995 to September 1995.

29. A fresh Charge Memo ought to have been issued to the Petitioner as a fresh cause of action had arisen on account of the Petitioner's absence from May 1995 to September 1995. The Petitioner ought to have been put up with a Notice before terminating the service of the Petitioner vide Punishment Order dated 10.10.1995 passed by the 2nd Respondent.



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30. Since, there is a violation of Principles of Natural Justice, this Court is inclined to set aside the Impugned Orders of the 1st and 2nd Respondents and remits the case back to the 2nd Respondent to issue a fresh Charge Memo to the Petitioner for his wilful absence from duty from May 1995 to September 1995.

31. The Respondents shall issue a fresh Charge Memo to that effect within a period of two months from the date of receipt of a copy of this order and thereafter endeavour to complete the disciplinary proceedings as expeditiously as possible.

32. It is made clear that absence of the Petitioner subsequent to the Punishment Order dated 10.10.1995 shall not be to the disadvantage of the Petitioner as the service of the Petitioner was terminated from 10.10.1995 and the Petitioner has been either before this Court or before the Industrial Dispute Tribunal.

33. The Respondents are directed to reinstate the Petitioner in the



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meanwhile as the Petitioner has only few years of residual service before he would attain the age of superannuation immediately thereafter.

34. This Writ Petition stands allowed with the above observations.

No costs.

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Neutral Citation : Yes/No
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To

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(Coimbatore) Ltd,
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C.SARAVANAN, J.

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