

WP(C) NO. 11321 OF 2021

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE T.R.RAVI

TUESDAY, THE 15TH DAY OF JUNE 2021 / 25TH JYAISHTA, 1943

WP(C) NO. 11321 OF 2021

PETITIONER/S:

SAJESH N. T.
AGED 49 YEARS
NADUVILE THAYYIL, NADUVATHOOR P. O., KOYILANDY,
KOZHIKODE DISTRICT - 673 620. (EX-DRIVER, KSRTC,
NEDUMANGAD DEPOT).

BY ADV N.SASIDHARAN UNNITHAN

RESPONDENT/S:

- 1 KERALA STATE ROAD TRANSPORT CORPORATION
REP. BY THE MANAGING DIRECTOR, TRANSPORT BHAVAN
FORT, THIRUVANANTHAPURMA - 695 023.
- 2 EXECUTIVE DIRECTOR (ADMINISTRATION)
KERALA STATE ROAD TRANSPORT CORPORATION, FORT,
THIRUVANANTHAPURAM-695 023.
- 3 DISTRICT TRANSPORT OFFICER,
KERALA STATE ROAD TRANSPORT CORPORATION, NEDUMANGAD
DEPOT, THIRUVANANTHAPURAM-695 541.

BY ADV T.P.SAJAN, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
15.06.2021, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

JUDGMENT

The petitioner entered service of the 1st respondent in 2013 as a Driver. Owing to the illness of his mother he had applied for leave from 18.07.2017 to 31.12.2017 as per Ext.P3. After expiry of the leave period, he could not join duty owing to the spread of Nippa epidemic in the locality and he had informed the situation to the office of the respondents. On 11.05.2018 the 3rd respondent intimated the petitioner that he has not been reporting for duty from 18.07.2017 onwards and directing him to report for duty before 31.05.2018 (Ext.P4). According to the petitioner on receipt of Ext.P4, he had contacted the 3rd respondent over phone and requested for a week's time to join duty and when no positive answer was received he had sent a representation on 02.06.2018 explaining the circumstances which prevented him for reporting for duty on 31.05.2018. The said representation is produced as Ext.P5 along with the Writ Petition.

2. On 01.10.2018 the 2nd respondent issued Ext.P6 order

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removing the petitioner from service with effect from 01.06.2018 invoking the power under Rule 24 of the Kerala Service Rules.

3. According to the petitioner respondents did not consider the leave application submitted by the petitioner on 18.07.2017 and it is his contention that the respondents could not have invoked Rule 24 since it is not a case where an unauthorised absence of more than 5 years. Even though the petitioner submitted Ext.P7 representation, there was no response from the respondents. The petitioner contends that this Court in Ext.P8 judgment in WP(C) No.5317 of 2020 has held that the power under Rule 24 cannot be invoked in cases where there is unauthorised absence of less than five years. Ext.P9 is the judgment in W.A.No.25 of 2021 filed against Ext.P8 judgment wherein a Division Bench of this Court has confirmed the judgment in so far as it holds that Rule 24 has no application; but observing that the employer is at liberty to take action in accordance with the provisions contained in the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960. The petitioner contends that in the light of Exts.P8 and P9 judgments of this Court, the order

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dismissing him from service is liable to be interfered with. The learned Standing Counsel for the respondents fairly submits that Exts.P8 and P9 judgments are still in force.

4. In the light of the authoritative pronouncement by the Division Bench of this Court Ext.P6 order is liable to be set aside.

5. In the above circumstances, this Writ Petition is allowed setting aside Ext.P6 order removing the petitioner from service and directing the respondents to reinstate the petitioner in service with all associated benefits. It is however made clear that this judgment will not stand in the way of the respondents initiating any action against the petitioner under the provisions contained in the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960, if so warranted.

The Writ Petition is disposed of accordingly.

Sd/-
T.R.RAVI
JUDGE

rkc

APPENDIX OF WP(C) 11321/2021

PETITIONER'S EXHIBITS

- Exhibit P1 TRUE COPY OF THE MEDICAL PRESCRIPTION DATED 26.4.2017 OF DR. N.V JAYACHANDRAN IN RESPECT OF THE MOTHER OF THE PETITIONER
- Exhibit P2 TRUE COPY OF THE MEDICAL PRESCRIPTION DATED 17.11.2017 OF DR. SHAJITH SADANAND IN RESPECT OF THE MOTHER OF THE PETITIONER
- Exhibit P3 TRUE COPY OF THE APPLICATION FOR LEAVE DATED 21.12.2017 SUBMITTED BY THE PETITIONER BEFORE THE OFFICE HEAD
- Exhibit P4 TRUE COPY OF THE LETTER NO G2/3010/18/NEDUMANGAD DATED 11.5.2018 OF THE 3RD RESPONDENT
- Exhibit P5 TRUE COPY OF THE REPRESENTATION DATED 2.6.2018 OF THE PETITIONER SENT TO THE 3RD RESPONDENT
- Exhibit P6 A TRUE COPY OF ORDER NO PL11/000806/2018 DATED 1/10/2018 OF THE 2ND RESPONDENT
- Exhibit P7 TRUE COPY OF THE REPRESENTATION DATED 20.2.2019 OF THE PETITIONER SUBMITTED TO THE 1ST RESPONDENT
- Exhibit P8 TRUE COPY OF THE JUDGMENT DATED 5.8.2020 IN WPC NO 5317/2020 OF THIS HONBLE COURT
- Exhibit P9 TRUE COPY OF THE JUDGMENT DATED 6.1.2021 IN WA NO 25/2021 OF THIS HONOURABLE COURT