

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2015

CORAM:

The Honourable Mr.Justice K.K.SASIDHARAN

W.P.No.26995 of 2014
& M.P.No.1 of 2014

K. Pattappasamy

...Petitioner

-Vs.-

1. The Government of Tamil Nadu
rep. by its Principal Secretary to Government (Home)
Fort St. George
Secretariat
Chennai-600 009.
2. The Principal Secretary
Transport Commissioner
Government of Tamil Nadu
Ezhilagam
Chepauk
Chennai-600 005.

3. R. Radhakrishnan

...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari calling for the records of the second respondent herein charge memo bearing Memo R. No.43665/VA1/2012 dated 8.8.2012 and the order of the first respondent herein in G.O.(D) No.209, Home (Tr-II) Department dated 28 March 2013 and quash the same.

For Petitioner : Mr.AR.L.Sundaresan
Senior Counsel
for Ms.AL. Gandhimathi

For Respondents: Mr.M.S. Ramesh
Addl. Govt. Pleader for RR1 & 2

ORDER

Introductory:

The Government of Tamil Nadu having found that an innocent girl by name Shruthi, class II Student of Zion Matriculation School, Selaiyur, Chennai slipped through the hole on the floor of the School Bus on 25 July 2012 and died on the spot and having arrived at a prima facie view that the Motor Vehicle Inspector who had inspected the vehicle and renewed the fitness certificate to the vehicle and the Regional Transport Officer, who was expected to cross check the vehicle failed in their duty, suspended them from service and initiated disciplinary proceedings.

2. The petitioner, the then Regional Transport Officer challenges the charge memo dated 28 March 2013 primarily on the ground that he was not expected to inspect all the vehicles and his duty was only to cross check 10% of the verification done by the Motor Vehicles Inspector and as such he was not liable to be proceeded under the provisions of Tamil Nadu Civil Services (Discipline and Appeal) Rules.

The facts:

3. The petitioner was initially appointed as Motor Vehicles Inspector Grade II. Finally, the petitioner was promoted as Regional Transport Officer. While the petitioner was working as Regional Transport Officer, Tambaram, the bus owned by Zion Matriculation Higher Secondary School was given fitness certificate by Thiru P. Rajasekaran, Motor Vehicles Inspector Grade-I. When the said vehicle bearing No.TN-23-S-9952 was plying to transport the School Children back to their respective homes, the child named Miss Sruthi, daughter of Thiru Sethumadhavan, had fallen down and was run over by the rear wheel of the said vehicle and she died on the spot. The police registered a case in Crime No.929 of 2012 against the driver, owner and cleaner of the vehicle. The petitioner having come to know of the incident submitted a report to the Transport Department and the District Collector.

4. The second respondent directed enquiry to be conducted with regard to the issuance of renewal of fitness certificate in respect of the School bus bearing No.TN-23-S-9952. The enquiry was conducted by Thiru P. Vijayaraj, Joint Transport Commissioner (in charge). The enquiry officer reported that the petitioner had over checked 10.28% of the vehicles notwithstanding the circular issued by the Transport Department that it would suffice in case 10% of the vehicles are checked by the Regional Transport Officer.

5. While so, the second respondent placed the petitioner under suspension vide order dated 26 July 2012. It was followed by the charge memo dated 8 August 2012 issued under Section 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The second respondent in the said charge memo alleged that the petitioner failed to over check the issuance of fitness certificates issued by the Motor Vehicles Inspector Grade-I and as such he failed to maintain absolute integrity and devotion to duty and thereby violated Rule 20 of the Tamil Nadu Government Servants Conduct Rules. The petitioner submitted his detailed explanation to the charge memo. Thereafter, the first respondent appointed the third respondent to hold enquiry. According to the petitioner even if the charges framed against him are taken at its face value, it would not constitute a misconduct. The petitioner therefore challenges the charge memo besides the order appointing the enquiry officer.

Defence:

6. The Joint Secretary to Government, Home Department filed a counter affidavit on behalf of respondents 1 and 2. According to respondent 1 and 2, being the head of office, the petitioner was expected to perform his supervisory work efficiently. In case the petitioner performed his work with devotion, accidents of this nature could have been avoided. The respondents 1 and 2 further contended that the very writ petition is pre-mature.

Rival contentions:

7. Thiru AR.L. Sundaresan, learned Senior Counsel for the petitioner contended that as per the circular issued by the Government, the petitioner is expected to cross check 10% of the vehicles. The report submitted by the enquiry officer appointed earlier confirmed the fact that the petitioner had over checked 10.28% of the vehicles. The learned Senior Counsel submitted that the petitioner was no way responsible for the issuance of fitness certificate by the Motor Vehicles Inspector. It was further contended that even if the charges are taken at its face value, it would not constitute a serious misconduct to be proceeded by issuing a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The learned Senior Counsel further contended that the petitioner was suspended as early as on 26 July 2012 and the enquiry is proceeding in a very slow manner and as such the charge memo is liable to be set aside.

8. The learned Additional Government Pleader contended that the petitioner is not challenging the authority of the Government to initiate disciplinary proceedings. According to the learned Additional Government Pleader charge memo could be challenged only on very limited grounds. The petitioner has no case that the second respondent is not having the authority to issue the charge memo.

Such being the position, the very writ petition is not maintainable.

Analysis:

9. The petitioner joined duty as Regional Transport Officer (hereinafter referred to as "R.T.O."), Tambaram on 16 February 2002. The R.T.O. is exercising supervisory jurisdiction over Motor Vehicles Inspectors, who are entrusted with the statutory duty of inspecting vehicles and issuance of fitness certificates.

10. The vehicle bearing Registration No.TN-23-S-9952 owned by Zion Matriculation Higher Secondary School, Selaiyur was inspected by Mr.P. Rajasekaran, Motor Vehicles Inspector Grade I for the purpose of renewing fitness certificate. The Motor Vehicles Inspector renewed the fitness certificate on 9 July 2012. It was renewed for a period of one year and more particularly upto 8 July 2013. The said vehicle was engaged in transporting children to the School from various locations, in and around Tambaram.

11. While so, on 25 July 2012 when the bus was plying to transport children from the School to their respective houses, a little child by name Sruthi had fallen down from the bus through a hole and was run over by the rear wheel of the very same vehicle. The helpless child died on the spot. The police registered a case against the driver and all other concerned.

12. It is true that the petitioner submitted a report to the District Collector and the Transport Commissioner informing them about the incident. The Government initiated disciplinary proceedings against the Motor Vehicles Inspector and placed him under suspension. Thereafter the second respondent placed the petitioner also under suspension under Rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on the ground that enquiry into grave charges was pending against him. The disciplinary authority issued a charge memo under Rule 17(b) of the the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The charge memo dated 8 August 2012 proceeds on the premise that the petitioner failed to over check the vehicles in respect of which fitness certificates were renewed by the Motor Vehicles Inspector Grade I and his failure to conduct inspection lead to the loss of life of a six year old student. The Government alleged that the petitioner failed to maintain absolute integrity and devotion to duty under Rule 20 of the Government Servants Conduct Rules, 1973.

13. The petitioner in his explanation contended that he was expected to inspect only 10% of the vehicles. However during the period in question, he has inspected 10.28% of the vehicles and therefore he has not violated the directions contained in the Government Order in G.O.Ms.No.1889 dated 2 August 1995. The

Government on receipt of the explanation submitted by the petitioner appointed the third respondent as enquiry officer. Thereafter the petitioner has come up with this writ petition.

14. The only question that arises for consideration is whether it is open to this Court to quash the charge memo at this point of time without allowing the Presenting Officer to lead evidence before the enquiry officer to substantiate the charges framed against the petitioner.

15. The petitioner is now facing disciplinary proceedings initiated by the second respondent. The primary responsibility is on respondents 1 and 2 to prove the charge levelled against the petitioner. It is not as if there is a statutory presumption and it is for the petitioner to rebut the said presumption. The Government is yet to produce materials before the enquiry officer in support of the charges framed against the petitioner. The petitioner has no case that the first respondent is not having the authority to initiate enquiry. This is not a case of initiating proceedings without jurisdiction. It is not within the province of this Court to consider the materials produced by the petitioner during the currency of the enquiry and to arrive at a conclusion as to whether those materials are sufficient to proceed against him.

16. The Tamil Nadu Government Civil Servants Conduct Rules contain detailed provisions with regard to the conduct of enquiry and punishment to be imposed on the delinquent in case the charges are proved. The statute gives ample opportunity to the delinquent to produce materials to substantiate his defence.

17. The question regarding quashing the disciplinary proceedings at the initial stage came up for consideration before the Supreme Court in Secretary Ministry of Defence v. Prabhaskar Chandra Mirdha, (2012) 11 SCC 565. The Supreme Court scanned the decisions on the point and summarised the legal position in the following words:

"12. Thus, the law on the issue can be summarised to the effect that the charge-sheet cannot generally be a subject-matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues.

Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings."

18. The learned Senior Counsel for the petitioner has taken up a contention that the charges framed against the petitioner would not justify initiation of proceedings under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. According to the learned counsel, it would at the most attract only Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

19. The issue regarding nature of proceedings and the provisions under which proceedings to be initiated against the delinquent are all within the prerogative of the disciplinary authority. It is not open to the Court to analyse the charge memo at the initial stage and to render a finding one way or the other. It should be left to the wisdom of the disciplinary authority. It could be tested by the Court only if the disciplinary authority ultimately imposed punishment notwithstanding the absence of materials to frame charges to proceed under major penalty proceedings.

20. The educational institutions operating bus service to transport students owe a duty to the student community and society at large. They are operating bus service not for charity. These operators are collecting transport fee from School children. They are given tax concession considering it as educational institution buses. Even then these institutions are maintaining old and worn out buses and endangering the lives of students. The authorities under the Motor Vehicles Act and Police seldom check these vehicles and as a result accidents of this nature happen many a time. The concerned authorities must realise their statutory duty. The transport department and police should conduct periodical check of school buses and must ensure strict compliance of the provisions of Motor Vehicles Act and Rules made thereunder. There should not be any more cases of Shruthi on account of the negligence and carelessness of the authorities concerned.

21. The Supreme Court in Kaushalya Devi vs. Karan Arora, 2007 (5) CTC 17 (SC), observed that totality of human life is like the beauty of sunrise or the splendor of the stars, beyond the reach of monetary tape-measure.

22. The Supreme Court in R.K.Malik and another vs. Kiran Pal and others, 2009(8) Scale 451, observed that loss of a child could have a devastating effect on a family which can be easily visualized and understood.

The Supreme Court said :-

"24.It is extremely difficult to quantify the non-pecuniary compensation as it is to a great extent based upon the sentiments and emotions. But, the same could not be a ground for non-payment of any amount whatsoever by stating that it is difficult to quantify and pinpoint the exact amount payable with mathematical accuracy. Human life cannot be measured only in terms of loss of earning or monetary losses alone. There are emotional attachments involved and loss of a child can have a devastating effect on the family which can be easily visualised and understood.

Result:

23. In the upshot, I dismiss the writ petition. Consequently, the connected MP is closed. No costs.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

Tr/

To

1. The Principal Secretary to Government of Tamilnadu (Home)
Fort St. George Secretariat, Chennai-600 009.
2. The Principal Secretary
Transport Commissioner
Government of Tamil Nadu
Ezhilagam, Chepauk
Chennai-600 005.

1 cc to Mr.A.L. Gandhimathi, Advocate, Sr. 16926

W.P.No.26995 of 2014

CTK (CO)

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