

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.06.2016

CORAM

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

W.P. No.31732 of 2014
& M.P.No.1 of 2014

S.Srinivasan

.. Petitioner

Vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation
[VPM] Ltd.,
3/137 Salamedu,
Valuthareddy Post,
Villupuram - 605 602.

2.The Enquiry Officer,
Tamil Nadu State Transport Corporation
[CBE] Ltd.,
37, Mettupalayam Road,
Coimbatore - 641 043.

.. Respondents

PRAYER : Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the impugned charge memo in reference No.Ka.Ku.No.175/1750/D7/TNSTC/2014 on the file of the first respondent dated 05.02.2014 and consequential enquiry notices in reference No.44/MD(PA)TNSTC(kovai)2014 on the file of the second respondent dated 20.11.2014 and quash the same.

For Petitioner : Mr.D.Veerasekaran

For Respondent No.1 : Mr.Paramasivados

For Respondent No.2 : Mr.P.Kannan Kumar

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O R D E R

This Writ Petition has been filed to issue a Writ of Certiorari, to call for the records relating to the impugned charge memo in reference No.Ka.Ku.No.175/1750/D7/TNSTC/2014 on the file of the first respondent dated 05.02.2014 and consequential enquiry notices in reference No.44/MD(PA)TNSTC(kovai)2014 on the file of the second respondent dated 20.11.2014 and quash the same.

2.The petitioner joined service as Office Manager Legal in the year 1981. He was promoted as Assistant Manager on 01.05.1982 and further promoted as Deputy Manager legal on 01.05.1988 and as senior Deputy Manager HRD in the year 2007 and retired on 30.04.2010. According to the petitioner, the first respondent issued with a Charge Memo dated 05.02.2014 against the petitioner framing seven charges and asked to submit explanation within seven days and submitted his detailed reply on 04.04.2014. Thereafter, the second respondent issued notice dated 24.10.2014 calling upon the petitioner to appear for an enquiry at Coimbatore on 17.11.2014 and he made a detailed reply dated 24.11.2014 to the second respondent. It is his further submission that the second respondent directed the petitioner to appear for the enquiry to be held on 02.12.2014 but he replied to the enquiry officer to adjourn the enquiry for two weeks for the reasons stated on 04.04.2014, 25.04.2014, 24.11.2014 and 29.11.2014. The petitioner has got no other alternative except to approach this Court to quash the impugned charge memo dated 05.02.2014 and consequential enquiry notice dated 20.11.2014 and hence, the Writ Petition has been filed.

3.Mr.D.Veerasekaran, the learned counsel for the petitioner would submit that the petitioner has already retired from service and after four years he was initiated with the disciplinary proceedings. According to the petitioner, there is no specific power to the Corporation to initiate disciplinary proceedings after the date of retirement and he would rely upon the judgment of this Court in W.P.(MD) Nos.6228, 6240, 6412, 6516 and 7255 of 2014 dated 03.09.2014 in respect of similar matter of the same department wherein the charge sheet and other proceedings were quashed.

4.The learned counsel for the respondents would submit that though there is no specific provision to the respondent to initiate disciplinary proceedings after retirement, in view of the fact that Tamil Nadu Pension Rules are applicable to the employees of the respondent Corporation, they were justified in initiating disciplinary proceedings even after retirement.

5.On a careful perusal of the case, it is seen that this case is squarely covered by the earlier order passed by this Court in W.P.(MD) Nos.6228, 6240, 6412, 6516 and 7255 of 2014 dated 03.09.2014 wherein also under similar circumstances, the charge sheet framed and all other proceedings initiated against the petitioners therein were quashed. The relevant portion of the said order is extracted below:

"14.The jurisdiction of the Tamil Nadu State Transport Corporation to initiate disciplinary proceedings after retirement of

the employees came up for consideration before this Court in W.P.Nos.46532 and 46533 of 2002, dated 16 March, 2007 [R.Balraj vs. Tamil Nadu State Transport Corporation [Kumbakonam Div.I] Ltd.and two others]. This Court considered the service regulations framed by the Tamil Nadu State Transport Corporation [Order dated 16 March, 2007 in W.P.Nos.46532 and 46533 of 2002] and clearly held that there is no specific power to the Corporation to initiate disciplinary proceedings after the retirement of its employees. This Court held that in case the employee has committed a loss or damage, it is open to the corporation to institute civil proceedings for recovery of the amount, irrespective of the fact as to whether the person is in service or out of service. In short, this Court has given a categorical finding that the Tamil Nadu State Transport Corporation has no right to initiate disciplinary proceedings after the retirement of concerned employees.

The Recent decision:

15.The Supreme Court in Dev Prakash Tewari vs. U.P.Coop. Institutional Service Board [2014 (8) Scale 216] had an occasion to consider the question as to whether it is open to the disciplinary authority to initiate disciplinary proceedings or continue it after retirement without any provision for the same under the relevant service Regulations. The Supreme Court, by following an earlier judgment in Bhagirathi Jana vs. Board of Directors, O.S.T.C.and others [1999 (3) SCC 666], held that in case there was no authority vested with the Department for continuing the disciplinary proceedings even for the purpose of imposing any reduction in the retiral benefits payable to the employee, such proceedings would be vitiated on the ground of lack of jurisdiction.

16.In view of the order passed by a coordinate Bench and the subsequent declaration of law laid down by the Supreme Court in Dev Prakash Tewari vs. U.P.Coop. Institutional Service Board [2014 (8) Scale 216], the petitioners are entitled to succeed.

17.In the result, the impugned charge memos as well as the consequential enquiry notices are set aside, insofar as the petitioners are concerned. However, this order would not stand in the way of recovering the alleged loss from the petitioners as per law, if the Corporation is so advised."

6.Following the order passed by this Court in W.P.(MD) Nos.6228, 6240, 6412, 6516 and 7255 of 2014 dated 03.09.2014, the charge memo dated 05.02.2014 and consequential enquiry notice dated 20.11.2014 are set aside, insofar as the petitioner is concerned. However, this order would not stand in the way of recovering the alleged loss from the petitioners as per law, if the Corporation is so advised.

7.The Writ Petition is allowed accordingly. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1.The Managing Director,
Tamil Nadu State Transport Corporation
[VPM] Ltd.,
3/137 Salamedu,
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Villupuram - 605 602.

2.The Enquiry Officer,
Tamil Nadu State Transport Corporation
[CBE] Ltd.,
37, Mettupalayam Road,
Coimbatore - 641 043.

+1cc to Mr.D.Veerasekaran, Advocate Sr.31612
+1cc to P.Paramasivadoss, Advocate SR.32283

W.P. No.31732 of 2014

ppa[co]
srg 06/07/2016