

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.11.2016  
PRONOUNCED ON : 25.01.2017

CORAM :

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.6515 of 2013

V.Muthu Raj

... Petitioner

Vs.

1.The Managing Director,  
Metropolitan Transport  
Corporation (Chennai),  
Pallavan Illam, Anna Salai,  
Chennai 600 002.

2.The General Manager,  
Metropolitan Transport Corporation,  
Pallavanillam, Annasalai,  
Chennai - 600 002.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ Of Certiorarified Mandamus calling for the records of the respondents, especially the second respondent relating to his proceedings made in Memorandum No.20651/ Sa Pi(O Na) 1/ Ma Po Ka/ 2004 dated 15.12.2012 and quash the same as null and void and illegal and invalid and consequently directing the respondents, especially the second respondent to re-instate the petitioner in service with all service and monetary benefits.

For Petitioner :Mr.A.Amalraj

For Respondents :Mr.P.Paramasivadoss  
Senior Counsel

ORDER

This writ petition has been filed for issuance of writ of Certiorarified Mandamus to quash the proceedings of the second respondent made in Memorandum No.20651/ Sa Pi(O Na) 1/ Ma Po Ka/ 2004 dated 15.12.2012 and for consequential direction to re-instate the petitioner in service with all service and monetary benefits.

2.The petitioner, who was employed as a Conductor in the respondent Corporation, was served with a charge memo dated 10.11.2004 with the following three charges:

1. Indiscipline of giving chocolates to woman passenger Sangeetha by Conductor V.Muthu Raj instead issuing ticket to her when she was travelling in bus route No.52K on 01.11.2004, and due to such reprehensible conduct, violating Standing Order - 25 (XI) made himself liable to sent him to the Police by the relatives, mother of Sangeetha along with co-passengers.

2. Reprehensible conduct of misbehaving with passenger wearing Conductor duty badge violating Standing Order No.25(XXVI) causing inconvenience to the passengers instead of ensuring their safe travel;

3. Reprehensible conduct of spoiling the reputation of the Transport Corporation violating Standing Order No.25(XLiii).

3. Pursuant to the charges, the petitioner had submitted his explanation on 26.11.2004, based on which, the second charge memo came to be issued on 04.12.2004. An enquiry was held. On the basis of the Enquiry Officer's report, a Show Cause Notice dated 13.06.2008 was issued on the petitioner calling for explanation as to why the punishment of removal of service should not be imposed on him. Consequently, on 16.12.2008, punishment of removal from service was imposed by the second respondent to the petitioner.

4.As against the said order, the petitioner had filed an appeal before the Managing Director, Metropolitan Transport Corporation. Thereafter, the petitioner had filed a writ petition W.P. No.16731 of 2009 seeking for a direction to the first respondent therein, to pass orders on the petitioner's appeal. By an order dated 22.12.2009, the Principal Seat of this Court had directed the first respondent therein to consider the petitioner's appeal and pass orders within the period of four weeks from the date of receipt of the order. Pursuant to the directions of the Principal Seat of this Court, the first respondent had issued an order confirming the punishment of removal of service issued by the second respondent.

5. According to the petitioner, the order was a non-speaking order and since the enquiry report was not furnished on the petitioner and also since his explanation was not considered, while the punishment was imposed, he had filed a writ petition in W.P. No.14572 of 2010. By an order dated

02.11.2011, the Principal Seat of this Court had set aside the order of the first respondent and directed the second respondent to furnish the copy of the Enquiry Officer's report and on receipt of such report and after considering the petitioner's explanation, the second respondent was directed to pass a speaking order. The petitioner had also submitted his explanation on 03.12.2011 to the second respondent herein. On receipt of the same, the second respondent passed an order dated 03.07.2012, whereby, the explanation was again rejected without assigning any valid reason.

6. Hence, the petitioner filed another writ petition in W.P. NO. 25647 of 2012 on the ground that it was a non-speaking order. The Principal Seat of this Court, by an order dated 3.10.2012, had held that the impugned order is again a non-speaking order and therefore, set aside the same and remitted the matter back to the second respondent for passing a final order.

7. In this background, an order dated 15.12.2012 came to be passed by the second respondent whereby, the petitioner was imposed with the punishment of removal of service. Challenging the same, the petitioner is before this Court in this writ petition.

8. The learned counsel for the petitioner submitted that though this Court had in earlier circumstances directed the second respondent to consider the petitioner's representation and pass a detailed speaking order, the second respondent had failed to do so. The learned counsel also submitted that the second respondent had not taken into consideration the fact that the Enquiry Officer's report had held the charges proved without any evidence either oral or documentary and that the petitioner was not given a proper opportunity to examine the complainant. In any case, the learned counsel submitted that the management ought to have examined the complainant to derive some nexus to link the petitioner with the alleged misconduct. The learned counsel also submitted that the punishment of removal from service is non-est in the eye of law on the ground that approval was not obtained under Section 33(2)(b) of the Industrial Disputes Act, since there was industrial dispute pending between the respondent management and the employees and during the pendency of the industrial dispute, the impugned order was passed.

9. Though the writ petition was admitted way back on 19.03.2013, no counter affidavit has been filed on behalf of the respondents. Nevertheless Mr.P.Paramasivadosh, learned Standing Counsel for the respondent submitted that the present writ petition is not maintainable and the petitioner has to approach

the Labour Court. According to the learned Standing Counsel, the petitioner had indulged in serious misconduct which warrants the highest punishment. Since the second respondent had also taken into account the earlier misconducts of the petitioner, the punishment of removal of service was properly imposed. With regard to the examination of the witnesses, the learned Standing Counsel argued that there was no need to examine the passengers for proving the misconduct since the Corporation's reputation would be at stake. Nevertheless since the respondents have taken into account the evidence of the Checking Inspector, who had visited the police station and obtained the First Information Report with regard to the petitioner's case, the charges were rightly held to be proved, based on which, the present impugned order has been passed.

10. I have given careful consideration to the submissions made by the respective counsels and I have perused the documents filed by the petitioner.

11. On a perusal of the Enquiry Officer's report dated 09.01.2008, it is seen that the management had let in evidence through one Muthuvel, Checking Inspector and had marked three documents, which are the Enquiry Officer's report, charge memo and letter of explanation. The said checking inspector was neither an eye witness nor a duty Checking Inspector on the date of occurrence and hence, he was in no way connected with the occurrence. In the Enquiry Officer's report, it has been observed that the Checking Inspector, though was not present in the scene of occurrence, had gone to the police station, wherein he had received written confessions from the complainant, namely, Sangeetha.

12. It is also seen from the findings of the Enquiry officer that the petitioner had made a specific request to the Enquiry Officer to cross-examine the complainant, namely, Sangeetha, which was denied by the Enquiry Officer, stating that since the Checking Inspector who had conducted a detailed enquiry, who had deposed before him had already obtained statement from Sangeetha, the oral evidence of the complainant or other passengers was not required. It is further observed in the Enquiry Report that the charges came to be proved only on the confession of the Checking Inspector's report. It is not in dispute that the Checking Inspector was not present in the scene of occurrence and he had deposed only on the basis of the statement given by the complainant, namely, Sangeetha. There is no direct evidence connecting the petitioner with the alleged misconduct. In the absence of any evidence, which links the petitioner with the alleged misconduct against him, it can be only said that the report has been made on insufficient evidence.

13. The Hon'ble Supreme Court of India in a case reported in 2002(7) SCC page No.142(In Sher Bahadur Vs. Union of India and Others) had held as follows:

"It may be observed that the expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, however, voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law. The mere fact that the enquiry officer has noted in his report, "in view of oral, documentary and circumstantial evidence as adduced in the enquiry", would not in principle satisfy the rule of sufficiency of evidence. Though, the disciplinary authority cited one witness Sh.R.A.Vashist, Ex. CVI/N.Rly., New Delhi, in support of the charges, he was not examined. Regarding documentary evidence, Ex.P-1, referred to in the enquiry report and adverted to by the High Court, is the order of appointment of the appellant which is a neutral fact. The enquiry officer examined the charged officer but nothing is elicited to connect him with the charge. The statement of the appellant recorded by the enquiry officer shows no more than his working earlier to his re-engagement during the period between May 1978 and November 1979 in different phases. Indeed, his statement was not relied upon by the enquiry officer. The finding of the enquiry officer that in view of the oral, documentary and circumstantial evidence, the charge against the appellant for securing the fraudulent appointment letter duly signed by the said APO (Const.) was proved, is, in the light of the above discussion, erroneous. In our view, this is clearly a case of finding the appellant guilty of charge without having any evidence to link the appellant with the alleged misconduct. The High Court did not consider this aspect in its proper perspective as such the judgment and order of the High Court and the order of the disciplinary authority, under challenge, cannot be sustained, they are accordingly set aside".

14. Following the principles laid down by the Hon'ble Supreme Court of India in the aforesaid judgment and on a perusal of the Enquiry Officer's report, I am of the view that there is no material or oral evidence creating a nexus between the petitioner and the alleged misconduct.

15. With regard to the petitioner's submission that no proper opportunity was granted to the petitioner, it is seen from page No.3 of the Enquiry Officer's report that the petitioner had made a specific request to examine the complainant namely Sangeetha, which was denied. The request of the petitioner to examine the complainant is relevant and reasonable particularly when the Checking Inspector had deposed on the basis of the FIR and a written statement which was claimed to have been given by her. Hence, I have no hesitation to hold that no reasonable opportunity was accorded to the petitioner to defend himself.

16. Further more, the Enquiry Officer had first examined the management witnesses and then had given opportunity to the petitioner to examine his witnesses. The Hon'ble Supreme Court in the Judgement in 2008 (8) SCC 236(In State of Uttaranchal and Others Vs. Kharak Singh) in paragraph No.15 had laid down principles for conducting a fair enquiry which reads as follows:

"15. From the above decisions, the following principles would emerge:

(i) The enquiries must be conducted bonafide and case must be taken to see that the enquiries do not become empty formalities.

(ii) If an Officer is a witness to any of the incidents which is the subject-matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the enquiry officer. If the said position becomes known after the appointment of the enquiry officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.

(iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged and give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.

(iv) On receipt of the enquiry report, before proceedings further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any."

17. As per the guidelines laid down by the Hon'ble Supreme Court for conduct of a domestic enquiry, the respondent ought to have taken steps first to lead evidence against the

workmen and give an opportunity to him to cross-examine the witnesses of the employer and thereafter, the petitioner should have been asked to lead his evidence. In the present case, not only did the respondent deny the petitioner's request to let in evidence through complainant Sangeetha, but had also permitted the management witnesses to lead in evidence first. As such, the entire enquiry itself is vitiated and suffers from procedural infirmities. On these two grounds itself the impugned order is liable to be set aside.

18. The learned counsel for the petitioner also pointed out that there was a conciliation pending between the management and the employees and since the respondent, without obtaining approval from the competent Tribunal under Section 33 (2)(b) of the Industrial Disputes Act, had chosen to remove the petitioner from service, the impugned order is non-est in law. There is no material on record to show the pendency of such conciliation. Since I have already observed that the impugned order is liable to be set aside on the earlier mentioned grounds, it may not be necessary to delve into this ground raised by the petitioner.

19. From the earlier conduct of the respondents in dealing with this case, it is seen that the petitioner was constrained to approach this Court on three earlier occasions. In the manner in which the enquiry was conducted and non-speaking orders being passed, it can only be concluded that the order of removal from service has been improperly and illegally passed and that the petitioner is kept out of service due to the mistake committed by the respondent Corporation. As such, the petitioner, though was not in service all along would be entitled to the back wages in view of the law laid down by the Hon'ble Supreme Court of India in 2013 (11) SCC 626 (In Shive Nandan Mahto Vs. State of Bihar and Others). The relevant portion reads as follows:

"8. Having heard the learned counsel for the parties, we are constrained to observe that the High Court failed to examine the matter in detail in declining the relief to the appellant. In fact, a perusal of the aforesaid short order passed by the Division Bench would clearly show that the High Court had not even acquainted itself with the fact that the appellant was kept out of service due to a mistake. He was not kept out of service on account of suspension, as wrongly recorded by the High Court. The conclusion is, therefore, obvious that the appellant could not have been denied the benefit of back wages on the ground that he had not worked for the period when he was illegally kept out of

service. In our opinion, the appellant was entitled to be paid full back wages for the period he was kept out of service."

20. In view of the aforesaid findings, the impugned order dated 15.12.2012 passed by the second respondent is quashed. Consequently, the respondents are directed to reinstate the petitioner in service with all service and monetary benefits.

21. In the result, this writ petition is allowed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

CM

To

1.The Managing Director,  
Metropolitan Transport Corporation (Chennai),  
Pallavaram, Anna Salai, Chennai 600 002.

2.The General Manager,  
Metropolitan Transport Corporation,  
Pallavanillam, Annasalai, Chennai - 600 002.

+ 1 cc to Mr.A. Amal Raj, Advocate Sr.5135

W.P.No.6515 of 2013

SSI (CO)

EU 28.02.17

WEB COPY