

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Writ Petition No.8840 of 2003

N.Kani

..Petitioner

Vs

Tamil Nadu State Transport Corporation
(Madurai-Division-4) Limited,
rep. By its General Manager
Dindigul

..Respondent

Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records pertaining to the order passed by the respondent in his proceedings Parvai:Sathu:A7:58 dated 5.3.2003 and quash the same.

For Petitioner : Mr.P.Ganesan for
M/s.Selvaraju

For Respondent : Mr.V.R.Kamalanathan

O R D E R

The petitioner was working as a Driver in Tamil Nadu State Transport Corporation. On 24.11.2002, while the petitioner was on wheels, an accident took place, in which seven persons lost their lives and 42 persons were seriously injured. A case in Crime No.278 of 2002 was registered against the petitioner for offences under Section 279, 337 (42 counts), 338 (4 counts) and 304 A (7 counts) against the petitioner. The department also issued a charge memo dated 02.12.2002 and proceeded with the domestic enquiry against the petitioner. The petitioner participated in the domestic enquiry and some witnesses were examined on either side. The Enquiry Officer by his report dated 29.01.2003, held that the charges against the petitioner were proved. The Management furnished a copy of the Enquiry Report to the petitioner by their communication dated 04.02.2003 and sought for explanation from the petitioner. The petitioner submitted his explanation dated 14.02.2003. The Management, considered the explanation and issued a second show cause notice dated 05.03.2003, in which the Management had proposed to impose

penalty of removal from service on the petitioner, challenging which, the petitioner has filed the present writ petition on 20.03.2003. At the time of admission of the writ petition, this Court has granted interim stay of all further proceedings.

2. When the matter came up for hearing, learned counsel for the petitioner submitted that the criminal case in C.C.No.68 of 2005 against the petitioner ended in acquittal on 11.08.2010 and therefore, the departmental proceedings against the petitioner should be dropped. He also produced a copy of the Judgment in C.C.No.68 of 2005. He also placed reliance on the following Judgments of the Hon'ble Supreme Court:-

(1) Capt.M.Paul Anthony vs. Bharat Gold Mines Ltd., and another reported in (1999) 3 Supreme Court Cases 679.

(2) G.M.Tank vs. State of Gujarat and another reported in 2006 (3) CTC 494.

3. Mr.V.R.Kamalanathan, learned counsel for the Management refuted the contentions.

4. This Court gave its anxious considerations to the rival submissions.

5. At the outset it is seen that the petitioner has rushed to this Court challenging the second show cause notice on the ground that the Management has proposed to impose penalty. In the considered opinion of this Court, that cannot be a good reason to challenge the second show cause notice. It is still open to the petitioner to convince the Management that he need not be visited with the extreme penalty of removal from service. In the opinion of this Court, the impugned order dated 05.03.2003 does not suffer from any legal infirmity, as contended by the learned counsel for the petitioner. In fact, even if an order of removal from service or dismissal from service is passed, it is always open to the petitioner to move the authorities under the Industrial Disputes Act for redressal of his grievance, where, disputed questions of act can also be gone into.

6. As far as the Judgments relied upon by the learned counsel for the petitioner is concerned, the same may not be of any assistance to him at this juncture because in this case, the petitioner is challenging the second show cause notice after he had participated in the enquiry. In this case, though FIR was registered in the year 2002, the charge sheet itself was filed by the police only in the year 2005. It is not necessary for the Management to wait indefinitely for the criminal prosecution to be launched and culminated. That apart, on a reading of the Judgment of the Criminal Court, it is crystal clear that the prime witness had turned hostile, which had

resulted in acquittal of the accused therein, which is not an honourable acquittal. It is trite that in a criminal prosecution, the degree of proof is one proof beyond reasonable doubt, whereas, in a domestic enquiry, it is one of preponderance of probabilities.

7. In the result, this writ petition is devoid of merits and the same is dismissed. However, liberty is given to the petitioner to raise all points before the appropriate forum. Two weeks' time is given to the petitioner from the date of receipt of a copy of this order, to give a representation to the second show cause notice dated 05.03.2003. No costs.

Sd/-
Assistant Registrar(AS)

//True Copy//

Sub Assistant Registrar

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To

Tamil Nadu State Transport Corporation
(Madurai-Division-4) Limited,
rep. By its General Manager
Dindigul

+1cc to Mr.Kamalanathan, Advocate, S.R.No.13678
+1cc to Mr.C.S.Associates, Advocate, S.R.No.13428

KJI (CO)
RS(15/03/2017)

सत्यमेव जयते

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