



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2017

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

W.P.No.13027 of 2003

1. K.Chandran (deceased)
2. S.Kannimariyal
3. Jemila

(petitioner Nos.2 and 3 were suo-motu substituted
as legal representatives of deceased 1st petitioner
as per order dated 10.2.2017 in W.P.No.13027/2003)

.. Petitioners

Vs.

1. The Managing Director
Tamil Nadu State Transport Corporation
Madurai Division II
No.4, Vannarppet
Thirunelveli District
2. The General Manager
Tamil Nadu State Transport Corporation
Madurai Division II
No.4, Vannarppet
Thirunelveli District

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a writ of Certiorarified Mandamus, calling for the records relating to the order of dismissal No.10278/S6/T.A.POK (M.KO.2/2001 dated 22.11.2001 passed by the second respondent and confirmed in appeal order in Letter No.10278/S6/M.KO.2/2001 dated 21.3.2002 passed by the first respondent herein and quash the same and thereby direct the first respondent to reinstate the petitioner into service as Conductor and pay back all service benefits with continuity of service.

For petitioner : Mr.K.Srinivasamoorthy

For respondents : Mr.V.R.Kamalanathan



ORDER

Chandran was working as Conductor in the Tamil Nadu State Transport Corporation (hereinafter would be referred to as "management") at the relevant point of time. The management issued a charge memo, listing six charges against him. As the explanation submitted by Chandran was not satisfactory, the management appointed Mr. Ramalingam, Superintendent, as an Enquiry Officer to conduct domestic enquiry against Chandran on the six charges, which are as follows:

- i) that on 13.4.2001, while he was working as Conductor in Bus No.67, he had not issued tickets to three passengers, who had boarded the bus at Chermadevi, but had collected the bus fare from them, amounting to Rs.42.75;
 - ii) that on the same trip, he had issued bogus bus tickets to three passengers, who had boarded the bus at Kalakadu and collected Rs.12.75/- from them. The bogus tickets issued to them contained Nos.142-1052, 1054 and 1055;
 - iii) that on the same trip, he had collected Rs.5/- for transporting luggage from Kalidaikurichi to Vadacheri and had not issued ticket for that;
 - iv) that on the same trip, he had collected money for transporting 4 sacks of lemon from Kanganakulam to Vadacheri and had not brought into account the sum of Rs.34/- and thus misappropriated the same;
 - v) that he had planned to cheat the management;
 - vi) that he had conducted himself irresponsible.
- The above six charges were in violation of Rule 16(14) of the Standing Orders.

2. On behalf of Chandran, one Anandaraj, his co-worker, conducted the defence. The management examined one witness to prove the charges. Chandran examined himself as defence witness.

3. The Enquiry Officer by report dated 30.7.2001 held the charges as proved. The management issued a second show cause notice dated 14.8.2001 enclosing a copy of the enquiry report and called upon Chandran to explain as to why he should not be visited with the extreme penalty of dismissal from service. Chandran gave his explanation dated 28.8.2001 and after considering the same, by the impugned order dated 22.11.2001, Chandran was dismissed from service. His appeal to the Managing Director of the State Transport Corporation was also dismissed by order dated 21.3.2002, challenging which Chandran has filed the present writ petition on 23.4.2003.



4. Initially, this writ petition was filed by Chandran through his counsel Mr.Charles Muthu Santhan. On 25.1.2017, this Court passed the following order:

"When the matter was taken up for hearing today, Mr.Charles Muthu Santhan, learned counsel on record filed a memo before this Court stating that the party had taken change of vakalat and also the relevant papers from him. The memo filed by the learned counsel for the petitioner is recorded.

2. Registry is directed to print the name of the petitioner in the cause list and post the matter for orders on 2.2.2017 at the top of the list."

On 3.2.2017, this Court passed the following order:

"Today when the matter was taken up for hearing, Mrs.Kannaimariyal, widow of Chandran and Mrs.Jemila, daughter of Chandran are present before this Court. They submitted that Chandran died on 22.5.2013 and sought one week time to engage a counsel.

In view of the above, the matter is adjourned to 10.2.2017. The parties are also informed to be present on 10.2.2017."

On 10.2.2017, this Court passed the following order:

"This writ petition has been filed by K.Chandran through Advocate Mr.D.Charles Muthu Santhan and K.K.Kumaravel. For some reasons, the advocates had withdrawn their appearance. It is also reported that K.Chandran died on 22.5.2013. On coming to know of the litigation, his widow Kanni Mariyal and his daughter Jemila appeared before this Court on 3.2.2017 and submitted that they need time for engaging a counsel. Therefore, the matter was adjourned to today. Today, i.e., 10.2.2017, they are present before this Court and submitted that they do not have any means to engage a lawyer and widow of Kanni Mariyal has also given a request in writing.

2. On the request of this Court, Mr.K.Srinivasa Moorthy of M/s.Row and Reddy, who is a leading practitioner on the labour side, agreed to appear pro bona for the petitioner. Copies of the petition, affidavit and typed set of papers were furnished to Mr.Srinivasa Moorthy. Since K.Chandran is dead, this Court is of the view that in the interest of justice, Kanni Mariyal and Jemila should be substituted in the place of K.Chandran. This Court suo-motu orders the



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substitution of Kanni Mariyal and Jemila in the place of Chandran. Unlike civil cases, it is not necessary to implead all the legal heirs of the deceased in writ proceedings. It would suffice if one of the legal heirs steps into the shoes of the deceased for prosecuting the writ petition.

3. Accordingly, the Registry is directed to make necessary corrections in the cause title by including the names of Kanni Mariyal and Jemila. The Registry is also directed to print the name of Mr.Paramasivadosh and Mr.V.R.Kamalanathan, learned counsel for the respondents and also print the name of the Managing Director, Tamil Nadu State Transport Corporation, Madurai Division, Tirunelveli District, in the cause list. The Registry is further directed to print the name of Mr.K.Srinivasa Moorthy, learned counsel for the petitioner."

5. Pursuant to the order dated 10.2.2107, Chandran's widow S.Kannaimariyal and his daughter Jemila were suo motu substituted as legal representatives in this writ petition.

6. Mr.K..Srinivasamoorthy, learned counsel for the petitioner submitted that the findings of the enquiry officer are indeed perverse, warranting interference by this Court.

7. Per contra, Mr.V.R.Kamalanathan, learned counsel appearing for the management submitted that this writ petition itself is not maintainable as Chandran had not chosen to raise a dispute under the Industrial Disputes Act and had straight away filed this writ petition. In support of this writ petition, he relied upon an unreported judgment of this Court in W.P.No.34968 of 2002 dated 19.6.2008, wherein on similar circumstances, this Court had refused to entertain the writ petition on the ground that the petitioner therein (who was also a bus Conductor), had not agitated the disputed questions of fact in the manner known to law before the labour forums under the Industrial Disputes Act.

8. This Court gave its anxious consideration to the rival submissions.

9. In the said case relied upon by Mr.V.R.Kamalanathan, this Court has referred to various decisions of the Supreme Court and has come to the following conclusion:

"13. In a catena of decisions, it has been held



that writ petition under Article 226 should not be entertained when the statutory remedy is available under the Act, unless exceptional circumstances are made out."

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10. In the light of the above judgment, now this Court has to see whether any exceptional circumstances exist in the present case for entertaining this writ petition?

11. Admittedly, Chandran had not taken recourse to the statutory remedy available to him under the Industrial Disputes Act. The enquiry report prima facie shows that charge memo was issued to Chandran and he denied the charges. Enquiry was conducted, wherein six charges were framed against him and he was also defended by his colleague by name Anandraj. Therefore, it is not a case where Chandran was dismissed from service without any enquiry. In the grounds raised by Chandran, he has attacked the findings of the enquiry officer on facts.

12. In a petition under Article 226 of the Constitution of India, this Court cannot go into disputed questions of fact, especially when there is a remedy available under the Industrial Disputes Act, where the Labour Court can permit the parties to adduce evidence. Therefore, this Court does not find any exceptional circumstance in the present case for interference under Article 226 of the Constitution of India.

13. In the result, this Writ Petition is dismissed as not maintainable. However, it is open to the petitioners to challenge the impugned order before the appropriate forum under the Industrial Disputes Act, if so advised. This Court places on record its appreciation to Mr.K.Srinivasamoorthy for having taken up this case pro bono for the petitioner. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ajr



To

1. The Managing Director
Tamil Nadu State Transport Corporation
Madurai Division II
No.4, Vannarppet
Thirunelveli District

2. The General Manager
Tamil Nadu State Transport Corporation
Madurai Division II
No.4, Vannarpet
Thirunelveli District

+1cc to Mr.Srinivasakurthy, Advocate, S.R.No.10534
+1cc to Mr.Kamalanathan, Advocate, S.R.No.10423

AK(CO)
RS(06/03/2017)

W.P.No.13027 of 2003