

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Writ Petition No.16748 of 2003

K.Paramaraj

Petitioner

Vs

1. General Manager,
Tamil Nadu State Transport
Corporation Ltd.,
Madurai Division-IV
Dindigul.

2. The Chairman,
Tamil Nadu State Transport
Corporation Ltd.,
Ezhilagam, Chepauk,
Chennai 600 005

Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified mandamus to call for the records relating to the order passed by the 1st respondent in his Order No.Sa.Thu.A5:309 dated 19.05.2003, quash the same and to direct the respondents to reinstate the petitioned as Driver in the respondent Corporation with all monetary benefits.

For Petitioner : Mr.M.Md.Ibrahim Ali

For Respondents :Mr.V.R.Kamalanathan, SC

ORDER

1. The petitioner was working as a driver in Rani Mangammal Transport Corporation Limited (hereinafter referred to as "RMTC Ltd."). He was issued with a charge memo dated 02.04.1991, in which it was alleged that he had produced false educational qualification certificate, as if he had passed 8th standard in Panchayat Union Middle School, Erumai Nayakenpatti at the time of his appointment as driver. The petitioner denied the charges and therefore the Transport Corporation appointed an Enquiry Officer, who conducted a domestic enquiry and submitted a report that the charges were proved.

<https://hcservices.ecourts.gov.in/hcservices/>

2. The General Manager of the RMTC Ltd., issued a 2nd Show Cause Notice dated 07.09.1992, calling upon the petitioner

as to why he should not be dismissed from service. The petitioner submitted a representation to the second show cause notice in the year 1992 itself. In the mean time, RMTC Ltd., was renamed as Tamilnadu State Transport Corporation and in that transition, the Management forgot to proceed against the petitioner.

3. After reorganisation, another show cause notice was issued to the petitioner in the year 2001, calling upon him as to why he should not be dismissed from service for having given bogus educational qualification Certificate and thereafter, he was dismissed from service on 01.11.2001. According to the petitioner, during the 11 year period, he passed S.S.L.C and therefore, he filed Writ Petition No.19383 of 2001 for quashing the order of dismissal, which was allowed by this Court on 01.10.2002, pursuant to which, he was reinstated in service on 29.11.2002. According to the petitioner, though he was reinstated, the backwages have been withheld.

4. In the mean time, on 12.08.2001, when the petitioner was driving the bus No.TN-57-N-1025, an accident occurred, in which, one person lost his life. Therefore, a case was registered against the petitioner by the Kambam South Police Station on 13.08.2001. After completing the investigation, a charge sheet was laid in C.C.No.350 of 2001 against the petitioner before the Uttamapallyam Judicial Magistrate for offences under Section 304(A) IPC.

5. Simultaneously, the department also initiated departmental action against the petitioner and an Enquiry Officer was appointed to conduct enquiry. The petitioner participated in the domestic enquiry. On 04.04.2003, the Enquiry Officer submitted his report, in which it is stated that the charges against the petitioner were proved. The Management, by letter dated 07.04.2003, gave a copy of the report of the Enquiry Officer and called for explanation from the petitioner. On 16.04.2003, the petitioner submitted his explanation. On 26.04.2003, the management issued a second charge notice, calling upon the petitioner to show cause as to why he should not be dismissed from service. The petitioner submitted his explanation on 02.05.2003. The Management, by the impugned order dated 19.05.2003, dismissed the petitioner from service, challenging which, this Writ Petition has been filed.

6. Heard the learned counsel for the petitioner and the learned counsel for the Transport Corporation.

7. The learned counsel for the petitioner submitted that the Management ought not to have conducted any domestic enquiry in respect of the accident that took place on 12.8.2001, as a criminal case was also registered against him in C.C.No.350 of 2001. At this juncture, it is brought to the notice of this Court by the learned counsel for the petitioner that subsequently, the petitioner was also acquitted in C.C.No.350 of 2001, during the pendency of the writ petition and therefore, according to him, enquiry proceedings stand vitiated.

8. Per contra, learned counsel for the respondent Corporation refuted the above submissions.

9. It is trite that departmental action and criminal proceedings can simultaneously go on in respect of the same incident. It is not necessary that the Management should wait for the out come of the criminal prosecution.

10. Very recently, in *Divisional Controller, Karnataka State Road Transport Corporation vs. M.G.Vittal Rao*, reported in (2012) 1 Supreme Court Cases 442, the Hon'ble Supreme Court, after considering the law laid down in *Capt.M.Paul Anthony vs. Bharat Gold Mines Ltd.*, and another reported in (1999) 3 Supreme Court Cases 679, has held that there is no bar for simultaneous conduct of criminal prosecution and departmental action.

11. In this case, the accident had taken place on 12.08.2001 and charge memo was issued to the petitioner on 19.08.2001, which shows that the department did not wait for the criminal prosecution to get over. Even according to the petitioner, criminal proceedings got over only recently, during the pendency of the Writ Petition. Mere acquittal by the Criminal Court on technical grounds or otherwise, cannot be a bar for proceeding with the departmental proceedings.

12. Be that as it may, the petitioner has filed the writ petition challenging the order of dismissal dated 19.05.2003, without availing of the alternative remedy available to him under the Industrial Disputes Act. In writ proceedings, this Court cannot go into the disputed questions of fact. On this score also, this Writ Petition is liable to be dismissed and accordingly the same is dismissed. No costs.

rg

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Assistant Registrar

//True copy//

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Sub Assistant Registrar

To

1. General Manager,
Tamil Nadu State Transport
Corporation Ltd.,
Madurai Division-IV Dindigul.

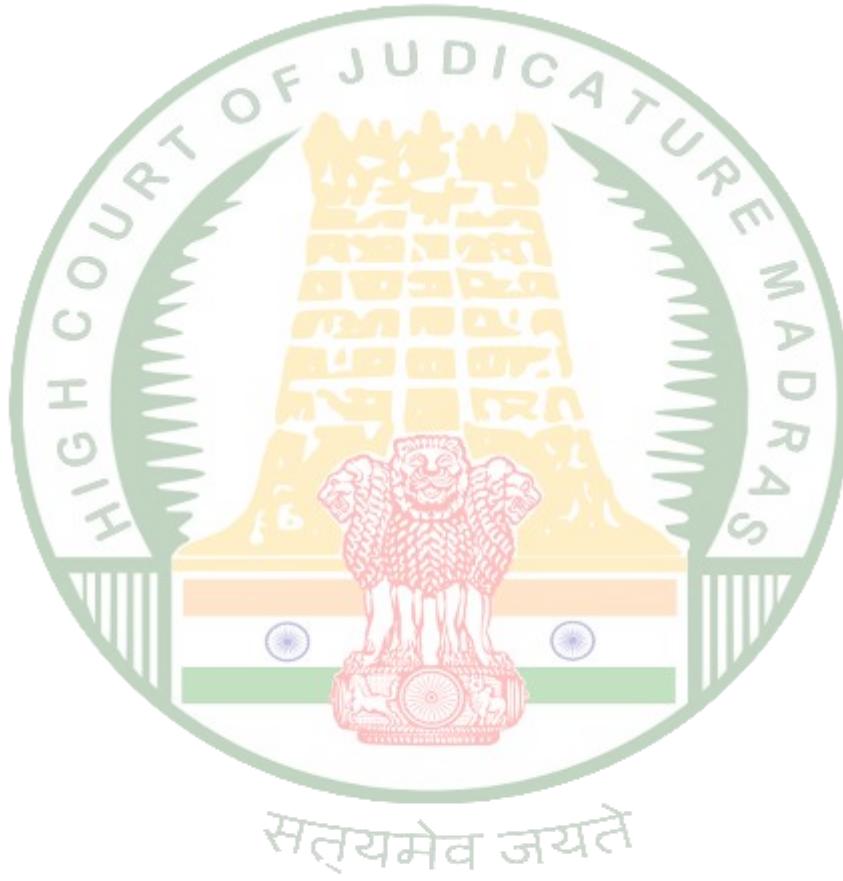
2. The Chairman,
Tamil Nadu State Transport
Corporation Ltd.,

<https://hcservices.ecourts.gov.in/cases>
Echilagam, Chennai 600 005.

C.C. to MR.V.R.KAMALANATHAN Advocate SR.NO.13677

W.P.No.16748 of 2003

RJ (CO)
VS 16.03.2017



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