



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.02.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD).No.1950 and 2607 of 2013

and

M.P.(MD)No.1 and 2 of 2013 in W.P.(MD)No.1950 of 2013

M.P.(MD)No.1 of 2013 in W.P.(MD)No.2607 of 2013

D.Pandi

... Petitioner
in both the petitions

Vs.

1. Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Represented by its Managing Director,
Bye-Pass Road, Madurai-625 010.
2. The General Manager,
Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Virudhunagar Region,
Madurai Main Road,
Virudhunagar.
3. The Branch Manager,
Virudhunagar Branch,
Tamil Nadu State Transport Corporation (Madurai) Ltd, Virudhunagar.
4. Mr. P.Shanmugavel,
Senior Assistant and Enquiry Officer,
Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Virudhunagar Region,
Madurai Main Road,
Virudhunagar.

... Respondents 1 to 4
in both the petitions

5. The Assistant Manager (Legal)
Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Virudhunagar Region,
Madurai Main Road,
Virudhunagar.

... 5th Respondent in
W.P.(MD)No.2607 of 2013



PRAYER in W.P.(MD)No.1950 of 2013: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for records pertaining to the impugned second show-cause notice issued by the 2nd respondent in Reference: Sattam/Sa.1/104/6B/12 dated 16.1.2013 and order of the 4th respondent setting the petitioner ex-parte in the departmental proceedings in connection with charge memo in Ref.No.Sattam/Sa.1/104/6B/2010 dated 16.3.2012 and quash the same and consequently direct the respondents to conduct departmental enquiry afresh from the stage of examining defence witnesses after affording the petitioner reasonable opportunity of being heard and after paying the subsistence allowance.

PRAYER in W.P.(MD)No.2670 of 2013: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for records pertaining to the impugned show-cause notice issued by the 5th respondent in Ref.No.Th.Aa.Po.Ka:Sattam/Sa.3/104/6B/12 dated 4.2.2013, order of the 4th respondent setting the petitioner ex-parte in the departmental proceedings in connection with charge memo in Ref.No.Sattam/Sa.1/104/6B/2010 dated 16.3.2012 enquiry report of the 4th respondent dated 1.11.2012 and quash the same and consequently direct the respondents to conduct departmental enquiry afresh from the stage of examining defence witnesses after affording the petitioner reasonable opportunity of being heard and after paying the subsistence allowance.

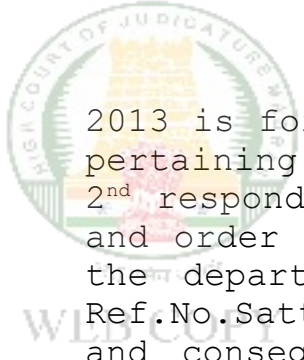
For Petitioner : Mr.V. Ajay Khose
for Mr.A.Rahul
For Respondents : Mr.A. Jeyaram

COMMON ORDER

The prayer in the writ petition in W.P.(MD) No.2607 of 2013 is for a Writ of Certiorarified Mandamus calling for records pertaining to the impugned show-cause notice issued by the 5th respondent in Ref.No.Th.Aa.Po.Ka:Sattam/Sa.3/104/6B/12 dated 4.2.2013, order of the 4th respondent setting the petitioner ex-parte in the departmental proceedings in connection with charge memo in Ref.No.Sattam/Sa.1/104/6B/2010 dated 16.3.2012 enquiry report of the 4th respondent dated 1.11.2012 and quash the same and consequently direct the respondents to conduct departmental enquiry afresh from the stage of examining defence witnesses after affording the petitioner reasonable opportunity of being heard and after paying the subsistence allowance.

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2. The prayer in the writ petition in W.P.(MD) No.1950 of



2013 is for a Writ of Certiorarified Mandamus, calling for records pertaining to the impugned second show-cause notice issued by the 2nd respondent in Reference: Sattam/Sa.1/104/6B/12 dated 16.1.2013 and order of the 4th respondent setting the petitioner ex-parte in the departmental proceedings in connection with charge memo in Ref.No.Sattam/Sa.1/104/6B/2010 dated 16.3.2012 and quash the same and consequently direct the respondents to conduct departmental enquiry afresh from the stage of examining defence witnesses after affording the petitioner reasonable opportunity of being heard and after paying the subsistence allowance.

3. Since the issue involved in these writ petitions are one and the same, they were heard together and disposed of by this common order.

4. The case of the petitioner is that he was appointed as a temporary Driver at the respondent Corporation on 29.07.2008. He had joined duty on 01.08.2008 and had been working continuously upto November 2009. Thereafter, he was transferred to Virudhunagar Branch and joined there on 08.11.2009. Thus, he has completed 780 working days continuously. Therefore, his post of Driver has to be regularised at the respondent Corporation. At that stage, a criminal case in Crime No.495/2010 came to be registered against the petitioner on 04.07.2010 under sections 279 and 304(A) IPC for the involvement of the petitioner in a road accident, which caused the death of a two wheeler rider. Thereafter, a charge memo dated 16.03.2012 was issued against the petitioner, for which, the petitioner gave his explanation on 26.03.2012. Thereafter, an Enquiry Officer was appointed and enquiry was commenced. The enquiry was conducted on various dates and the petitioner had also regularly attended the enquiry on 29.05.2012, 14.06.2012, 28.06.2012 and 03.07.2012. The Department witnesses were examined. However, for the purpose of production of the petitioner's side witnesses, the enquiry was posted to 10.07.2012, 20.09.2012, 09.10.2012 and 06.11.2012. Out of these four days, where enquiry was posted, the petitioner could not attend the enquiry. The reason is that he had to attend a criminal case before the Judicial Magistrate Court, Tuticorin and on other dates, since he was not well, on medical ground, he could not attend the enquiry and each time, he had sent prior communication to the Enquiry Officer for his non appearance. In spite of the said bonafide reasons for the non appearance on the part of the petitioner, the Enquiry Officer had concluded the enquiry abruptly and his enquiry report dated 01.11.2012, after having set exparte of the petitioner, had concluded with the findings that the charges framed against the petitioner were proved. Pursuant to the enquiry report, the petitioner was served with notice seeking explanation by the respondents. However, along with the said notice, a copy of the enquiry report was not furnished to the petitioner. Therefore, the petitioner had approached this Court in W.P. (MD) No.1950/2013.



5. During the pendency of the said writ petition, the respondent has issued the present impugned notice along with a copy of the enquiry report. In the present impugned notice dated 04.02.2013, the respondent has categorically stated that as per the Enquiry Officer's report, charges framed against the petitioner had been proved and therefore, it was proposed to inflict a maximum punishment of removal from service and accordingly, the petitioner was asked to give his explanation as to why such a maximum punishment should not be imposed against him. Also, the respondents had directed the petitioner to give a reply within a period of one week. Challenging the show cause notice, enquiry report as well as the charge memo, the petitioner has come out with these writ petitions.

6. Heard both sides.

7. The learned counsel for the petitioner would invite the attention of this Court to the very enquiry report dated 01.11.2012, wherein, the Enquiry Officer, though has stated in the very opening paragraph that on 4 hearings, ie., 10.07.2012, 20.09.2012, 09.10.2012 and 06.11.2012, notices were given to the petitioner, he had not attended the enquiry, however, he had concluded the enquiry and completed the report on 01.11.2012 itself. Assuming that if the enquiry had been extended upto 06.11.2012, the Enquiry Officer could not have concluded the enquiry report by signing the same on 01.11.2012, whereby, the petitioner was set exparte and findings were given that the charges framed against the petitioner were proved.

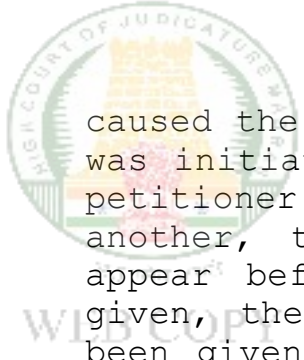
8. Moreover, the learned counsel for the petitioner would submit that for non appearance before the Enquiry Officer for the said four dates, intimation had been given and on one occasion, it is because of the preoccupation on the part of the petitioner to attend a Court for a case pending in Judicial Magistrate Court, Tuticorin and on other three occasions, because of health reasons. Having accepted the said reasons given by the petitioner, if the Enquiry Officer had given finally a date for further continuance of petitioner side witnesses, as admitted by them in the very enquiry report itself, on 06.11.2012, the Enquiry Officer should have waited till 06.11.2012 and even on the said date, if the petitioner had not attended the enquiry or has not shown any progress in the enquiry by producing his evidences, then, it is open to the Enquiry Officer to take a decision exparte. Here, in this case, the Enquiry Officer, though has given time up to 06.11.2012, has jumped into such a conclusion by setting the petitioner exparte and concluded the proceedings by giving a cryptic findings that the charges framed against the petitioner were proved. This attitude on the part of the Enquiry Officer certainly vitiate the entire report of the Enquiry Officer, based on which, no punishment can be awarded against the petitioner.



9. However, in the notices issued pursuant to the Enquiry Officer's report, the respondents have categorically proposed to state that a maximum punishment of removal of service is going to be inflicted on the petitioner. Therefore, it is a predetermined decision taken on behalf of the disciplinary authority, namely, the respondents that without completing the enquiry in the manner known to law, they have concluded to give such a maximum punishment to the petitioner. Therefore, the learned counsel for the petitioner would submit that the petitioner, having completed 780 days continuous service with the respondent Corporation, ought to have been confirmed and absorbed earlier and in order to avoid the same and to send petitioner out of service purposely, these orders have been passed without giving a full-fledged opportunity to the petitioner to complete the enquiry. Therefore, the learned counsel for the petitioner would submit that the impugned charges, enquiry report as well as the notices are liable to be interfered with.

10. The learned counsel would also make submissions that in similar circumstances, where another Driver of the respondent Corporation involved in fatal accident, a different view has been taken by the respondent Corporation, whereby a punishment of deferring the conferment of permanency was made, by which, the erring employee, in that case, had been directed to complete 240 days temporary service, so that he would be entitled to get absorbed. Even against that punishment when the said employee approached this Court, a Division Bench of this Court, by order dated 15.07.2016, in W.A.(MD) No.1062/2016, has concluded that there is no justification on the part of the respondent Corporation therein, not conferring upon the employee therein the permanent status, after the expiry of 480+240 days, totally, working out to 720 days. Therefore, a direction was given to the respondent Corporation to confer permanent status on the said employee on completion of 720 days ie., including the deferral period of 240 days, which was imposed by him by way of punishment. In the case on hand, since the petitioner also similarly situated, the respondents have taken a different yardstick, by which, the proposed punishment of removal of service is going to be imposed by them, as the same is reflected in the impugned notice. Therefore, on this ground also, the impugned orders are liable to be interfered with, the learned counsel for the petitioner contended.

11. Per contra, the learned counsel for the respondents would submit that the accident, where the petitioner involved, is a fatal accident and witnesses were examined, the petitioner had been given a chance to cross examine the witnesses produced on behalf of the Police Department. The witnesses would disclose the fact that in spite of the space available on the road, without applying the brake, the petitioner had carelessly driven the vehicle, which

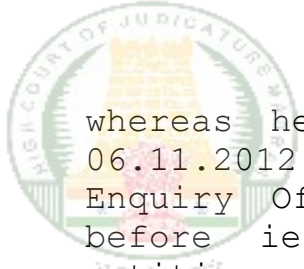


caused the death of an innocent person. Therefore, proper enquiry was initiated and conducted, number of hearings were given to the petitioner to complete the enquiry and every time, one after another, the petitioner had given lame excuses and avoided to appear before the Enquiry Officer. Even if further chance is given, the petitioner would not have attended, as he had already been given four chances as has been marked in the enquiry report itself. Therefore, based on the available evidences, after having set the petitioner exparte, the Enquiry Officer has given his conclusion that the charges were proved against the petitioner. Based on the charges, the proposed action to be taken against the petitioner has been mentioned in the show cause notice, as it is a normal procedure to be adopted by any disciplinary authority to get the views of the delinquent, before taking any decision for inflicting punishment.

12. The said show cause notice has been assailed by the petitioner before this Court, instead of giving any reply, the petitioner cannot preempt any decision, which is going to be taken by the respondent and based on which, the writ petition ought not to have been filed. Therefore, there is no infirmities in the procedure being adopted by the respondent Corporation in initiating, conducting, and completing the enquiry and therefore, no interference is required from this Court in respect of the impugned proceedings herein, he contended.

13. This Court had considered the rival submissions made on behalf of the learned counsel on either side.

14. As has been pointed out by the learned counsel for the petitioner, now, a copy of the enquiry report dated 01.11.2012 is filed by the petitioner in the typed set of papers. On perusal, it discloses that the Enquiry Officer has stated that four days were given for completing the enquiry and the petitioner had not attended all the four days. The last date, according to the Enquiry Officer, given for enquiry to be on 06.11.2012. According to the Enquiry Officer, the petitioner had not attended on 06.11.2012 also. Therefore, he has been set exparte, whereas, the said enquiry has been concluded and signed by the Enquiry Officer on 01.11.2012 itself. When this issue was specifically pointed out by this Court to the learned standing counsel for the respondents, there is no alternative plea or document has been produced by the respondent side to show that even after 06.11.2012, after having given the said chance, where the petitioner had not attended enquiry, the Enquiry Officer had concluded that the petitioner has to be set exparte. In the absence of any such documents to show that the final chance on 06.11.2012 was given to the petitioner to produce his evidences and the date mentioned in the enquiry report, as if, it was concluded on 01.11.2012, it can be presumed that the Enquiry Officer has concluded the enquiry as early as on 01.11.2012,



whereas he has stated that a chance of hearing was given on 06.11.2012. When the enquiry date was given on 06.11.2012, the Enquiry Officer should not have completed the enquiry a week before i.e., on 01.11.2012 itself, whereby he has set the petitioner exparte. Therefore, there is a force in the contention made by the learned counsel for the petitioner that the enquiry was not conducted in the manner known to law. For this reason alone, the impugned proceedings, especially, the enquiry report and the subsequent notices can very well be interfered with by this Court.

15. As has been stated in the enquiry report itself, several dates were given by the Enquiry Officer to conclude the enquiry. The department side witnesses had been examined and a chance to cross examine was also given to the petitioner. Only after, completing the witnesses of the Department, this confusion had happened and proper opportunities were not given to the petitioner to let in evidence on his side. Therefore, this Court is of the considered view that these matters can be remanded to the respondents for reconsideration and to commence or continue the enquiry from the stage, where the petitioner has been set exparte.

16. In the result, the following orders are passed in this writ petition:

(i) That the impugned enquiry report and the consequent notices seeking explanation from the petitioner are hereby quashed.

(ii) The matter is now remitted to the respondents with a direction that the Enquiry Officer can proceed further or continue enquiry from the stage, where the petitioner has been set exparte.

(iii) While continuing the enquiry, the Enquiry Officer has to give reasonable chance to the petitioner to prove his innocence including the chance of letting in evidence oral and documentary and after having given such opportunities, it is open to the Enquiry Officer to decide the issue by concluding his enquiry.

(iv) It is needless to mention that once the Enquiry Officer gives notice by giving further date for continuation of the enquiry, the petitioner shall appear before the Enquiry Officer and he can take only reasonable time to produce the evidences and shall give full cooperation to complete the enquiry.

(v) If the Enquiry Officer finds that still, the petitioner takes unnecessary adjournments, without showing any considerable progress in completing the enquiry, it is open to the Enquiry Officer to take a decision thereon, based on the merits of the case and at any rate, the enquiry, as directed above, shall be completed within a period of three months from the date of receipt of a copy of the order.

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17. With these observation and directions, the writ



petitions are disposed of to the extent indicated above. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

+ 1 CC TO Mr.A.RAHUL, ADVOCATE IN SR No. 6994

RR

TE/JC/SAR-III : 19/06/2017 : 8P/2C

W.P.(MD).No.1950 and 2607 of 2013 and
M.P.(MD)No.1 and 2 of 2013 in W.P.(MD)No.1950 of 2013
M.P.(MD)No.1 of 2013 in W.P.(MD)No.2607 of 2013
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