

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :30.07.2018
CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.35094 of 2015
and MP.No.2 of 2015 and W.M.P.No.19882 of 2016

A.Magudeeswaran

.. Petitioner

Vs

1. The Managing Director,
Tamil Nadu State Transport
Corporation (Cbe) Ltd.,
37, Mettupalayam Road,
Coimbatore -641 043.

2. The General Manager,
Tamil Nadu State Transport
Corporation (Cbe) Ltd.,
37, Mettupalayam Road,
Coimbatore -641 043.

.. Respondents

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to call for the records of the second respondent vide his proceedings in reference -1/G5/213/TNSTC/08/ Dated 31.08.2015 and quash the same as illegal, arbitrary and against the principle of natural justice.

For Petitioner : Mr.A.Rajendiran
For Respondents : Mr.P.Kanan Kumar

O R D E R

The two show cause notices issued in proceedings dated 31.08.2015, directing the writ petitioner to submit his explanation in respect of the proposed punishments, is under challenge in this writ petition.

2. The learned counsel for the writ petitioner states that as per the investigation report filed by the Inspector, the writ petitioner is not at all liable for any charges. The very initiation of proceedings against the writ petitioner is contrary to the report submitted and filed by the Inspector. This apart, the accident took place long back in the year 2008 and the disciplinary action was initiated after a lapse of five years.

3. The learned counsel for the petitioner further states that the Investigating Officer came to the conclusion that the writ petitioner was not at all liable for the accident and thus, the respondents are bound to follow the report submitted by the Investigating Authority and also the Enquiry Officer.

4. The learned counsel for the respondents opposed the contentions of the writ petitioner by stating that the present writ petition has been filed, challenging two show cause notices issued by the respondents. The competent authorities have decided to deviate the findings of the enquiry officer on the basis of certain clinching evidences available on record against the writ petitioner. It is contended that the disciplinary authority is empowered to deviate the findings of the enquiry officer and the only requirement is that show cause notice is to be issued before taking final decision. In other words, reason for deviation to be recorded and the show cause notice to be issued to the delinquent officials.

5. The accident took place, when the writ petitioner was driving the Corporation Bus. The Motor Accident Claims Tribunal case is also pending. Under these circumstances, whether the writ petition challenging the show cause notices can be entertained by this Court under Article 226 of the Constitution of India.

6. Admittedly, the present writ petition has been filed, challenging two show cause notices issued to the writ petitioner. Undoubtedly, the competent disciplinary authority is empowered to deviate the findings of the enquiry officer. However, in the event of taking a different view, then the reason must be recorded and a show cause notice is to be issued to the delinquent, stating the reasons, enabling him to submit explanations in respect of the deviated findings of the disciplinary authorities. The writ petitioner, instead of submitting explanations, moved the present writ petition, challenging the very show cause notice.

7. This Court is of the opinion that no writ petition can be entertained against the show cause notice. Under exceptional circumstances, these show cause notices have been issued without any jurisdiction of competency concerned. No writ can be entertained against the show cause notice, unless, it is established that the said show cause notice was issued without jurisdiction or by an incompetent authority or it was issued on malafides. Even in case of alleged malafides, the authority against whom such an allegation was raised, is to be impleaded as party respondent in the writ proceedings in his personal capacity. In the absence of any one of these legal grounds, no writ can be entertained against the show cause notice.

8. In the instant case on hand, this Court is of the opinion that the writ petitioner relied upon certain documents to show that he is innocent of the allegations. The respondents contended that there are certain direct evidences to prosecute the writ petitioner. There are sufficient proof in the Enquiry Officer's report and hence show cause notice was issued, deviating the findings, so as to receive objections from the writ petitioner.

9. This Court is of an opinion that the disciplinary authority, on taking a decision to deviate the findings of the enquiry officer has to follow the procedures, enabling the delinquent to submit his further explanations on the ground from which deviations are made. Under these circumstances, the writ petitioner is at liberty to submit explanation/objections and the details or documents if any to the respondents. In the event of receiving any such explanation/objections from the writ petitioner, the respondents are bound to consider the same on merits and in accordance with law and pass final orders in the departmental disciplinary proceedings. Thus, all the contentions raised in the present writ petition shall be raised by the writ petitioner before the authorities concerned and this Court cannot entertain the writ petitions at the show cause notice stage.

10. In this view of the matter, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ak/kak

To

+1cc to Mr.A.Rajendiran, Advocate, S.R.No.51986
+1cc to Mr.P.Kanan Kumar, Advocate, S.R.No.51284

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SR(CO)
CS/21/08/18