IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 24.04.2018
CORAM:
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1509 of 2016
and
CMP No.18670 of 2016

M.S.Sivakamasundari
Working as Assistant Manager
(Personnel & Wages),
Tamilnadu State Transport Corporation
(Villupuram), Cuddalore Region ... Appellant

versus

1. The Additional Chief Secretary to the Govt.,
Transport Department, Secretariat,
St. George Fort, Chennai.

2. Tamilnadu State Transport Corporation,
(Villupuram) Cuddalore Region,
Rept. By its Managing Director, Office of the
Tamilnadu State Transport Corporation ... Respondents

Appeal filed against the order passed by this Court dated 04.8.2016 passed in W.P.No.25370 of 2016.

W.P.No. 25370 of 2016:Petition filed under Article 226 of the constitution on India, praying for issuance of Writ of Certiorarified to call for the records of the second respondent with No.Ka.Ku.No.612/ 7612/D7/ Tha.Na.A.Pho.Ka/2015 dated 16.10.2015 in respect of the charge memo and with No.Ka.Ku.No.612/ 7612/D7/ Tha.Na.A.Pho.Ka/2015 dated 18.11.2015 in respect of the punishment imposed upon the petitioner and to quash the same.

For appellant : Mr.V.Ajayakumar

For Respondents: Mr.M.Karthikeyan
Additional Government Pleader for R1
Mr.K.J.Sivakumar for R2

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The challenge in this Intra Court Appeal is to the order of the learned Single Judge dated 04.08.2016 made in WP No.25370 of 2016.

2. The facts that led to the filing of the Writ Petition are as follows:

The appellant was employed as Assistant Manager (Tyres) in the Villupuram Zone of the 2nd respondent Corporation. A charge memo was issued to her on 16.10.2015, setting out four charges against her. The sum and substance of the charges is that a comparative analysis of the Tyre mileage for the months of July and August 2015, shows reduction in the mileage of the Tyres and the wear and tear of new Tyres was continuously high. It is further claimed that when a special Inspection was carried out in the Pondicherry Depot of the 2nd respondent Corporation it was found that instructions regarding Tyre maintenance were not properly communicated to the workers and that she was negligent in performing her duties.

3. The appellant furnished her explanation for the said charge memo. The Managing Director of the 2nd respondent Corporation by an order dated 18.11.2015, made in Ka.Ku.No.612/7612/T7/TNSTC/2015, imposed a major penalty of stoppage of increment for the period of three months. Contending that the said punishment being a major penalty was imposed without conducting an enquiry, the appellant came forward with the above Writ Petition, challenging the said order imposing punishment.

4. In the Writ Petition apart from challenging the imposition of major penalty without enquiry, the appellant had claimed that the penalty has been imposed only with view to prevent her from getting promotion. The learned Single Judge, who heard the Writ Petition proceeded on the footing that what has been challenged in the Writ Petition is only a Charge Memo and based on the submission made by the learned counsel appearing for the 2nd respondent Corporation, directed an enquiry to be conducted by consolidating these charges along with other pending charges against the appellant.

5. Aggrieved, the appellant has come forward with this Intra Court Appeal.

6. We have heard Mr.V.Ajayakumar, learned counsel appearing for the appellant and Mr.M.Karthikeyan, learned Additional Government Pleader appearing for the 1st respondent and Mr.K.J.Sivakumar, learned counsel appearing for the 2nd respondent.

7. The fact that the penalty of withholding increment is a major penalty is not in dispute. It is also not in dispute that no enquiry was conducted before the second respondent chose to impose a major penalty, by his order dated 18.11.2015. Unfortunately, these infirmities were not brought to the notice of the learned Single Judge, who proceeded to dispose of the Writ Petition on the ground that what was under challenge was the Charge Memo not the order imposing punishment. It is also brought to our notice by Mr.V.Ajaykumar, learned counsel appearing for the appellant that for very same charges, viz. regarding the poor mileage of the tyres, during August 2015 and other charges the appellant was charge sheeted again on 09.09.2015, by an order dated 24.07.2016 in Ka.Ku.No. 630/7630/D7/TNSTC/2015, a punishment of censure was imposed on the appellant.

8. A counter affidavit has been filed by the Corporation in this Intra Court Appeal. In the said counter affidavit, the fact that no enquiry was conducted is admitted. It is claimed that the punishment imposed was a minor punishment. The 2nd respondent Management also seeks liberty to consolidate the charges against the appellant and conduct an enquiry afresh.

9. Mr.V.Ajaykumar, learned counsel appearing for the appellant would bring our notice that the appellant was charge sheeted again on 09.09.2015 for the very same charge of reduction in mileage of the tyres during August 2015 and certain other charges and ultimately by an order dated 24.07.2016 made in proceedings Ka.Ku.No.630/7630/D7/TNSTC/2015, the management had imposed a punishment of censure on the appellant.

10. In the counter affidavit filed by the 2nd respondent Corporation in this Appeal, it is contended that no enquiry is required, in as much as, the punishment was only a minor punishment. The Service Rules of the Corporation shows that the penalty of withholding of an increment with or without cumulative effect is shown as a major penalty. Therefore, the imposition of major penalty without conducting an enquiry cannot be accepted. It is also seen from the proceedings dated 24.09.2016 that the appellant has been inflicted with a minor penalty of censure for the very same charge regarding the reduction in mileage of the tyres during the month of August 2015.

11. We are, therefore, of the considered opinion that the order impugned in the Writ Petition imposing a major penalty without an enquiry cannot be sustained and same is liable to be set aside. We make it clear that it will open to the Corporation to proceed with disciplinary enquiry, with reference to other charges that might have been framed against the appellant. In this view of the matter, we are constrained to allow this Intra Court Appeal and set aside the order of the

learned Single Judge. The Writ Petition in WP No.25370 of 2016 will stand allowed and the order dated 18.11.2015 imposing a major penalty of stoppage of increments for a period of three months will stand quashed. However, there will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True copy//

Sub Assistant Registrar

jv

To

1. The Additional Chief Secretary to the Govt.,
Transport Department, Secretariat,
St. George Fort, Chennai.

2. The Managing Director,
Office of the Tamilnadu State Transport Corporation
Tamilnadu State Transport Corporation,
(Villupuram) Cuddalore Region,

+1cc to Mr.K.J.Sivakumar, Advocate SR.No.30496
+1cc to Mr.V.Ajaya Kumar, Advocate SR.No.30260

W.A.No.1509 of 2016
and CMP No.18670 of 2016

PPA(CO)
GN(16/05/2018)