



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.01.2018

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.17463 of 2014

S.D.Kamaraj

... Petitioner

Vs.

1.Tamilnadu State Transport Corporation
(Kumbakonam) Ltd.,
represented by its Managing Director,
27, New Railway Station Road,
Kumbakonam - 612 001.

2.The General Manager,
Tamilnadu State Transport Corporation
(Kumbakonam) Ltd.,
Nagapattinam Region,
140, Public Office Road,
Nagapattinam.

... Respondents

Prayer : This writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records pertaining to the impugned order passed by the 2nd respondent in his office proceedings in Tha.Aa.Po.Ka/D2/Nagai/145/2011 dated 30.04.2014, quash the same.

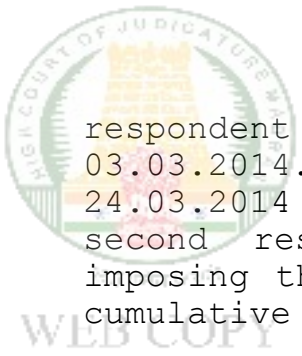
For Petitioner : Mr.A.Rahul

For Respondents : Mr.D.Sivaraman

O R D E R

The petitioner is working as a driver in TNSTC(Kumbakonam) Limited. On 26.06.2011, a bus driven by him got involved in an accident. In this regard, crime No.316 of 2011 was registered against the petitioner. It was also charge sheeted and taken on file as S.T.C.No.133 of 2012 on the file of the Judicial Magistrate No.1, Nagapattinam. By judgment dated 04.09.2012, the petitioner was acquitted.

2.In the meanwhile, the petitioner was issued with a charge memo on 08.08.2011. Instead of replying to the said charge memo, the writ petitioner invoked the provisions of the Right to Information Act and sought copies of certain documents. The second



respondent thereafter issued the second show cause notice dated 03.03.2014. The petitioner submitted his explanation dated 24.03.2014 in response thereto. After considering the same, the second respondent passed the impugned order dated 30.04.2014 imposing the punishment of stoppage of increment for one year with cumulative effect. The same is impugned in the writ petition.

3. Heard Mr.V.Ajay Khose, appearing for Mr.A.Rahul, learned counsel for the petitioner and Mr.D.Sivaraman, learned standing counsel for the respondent Corporation.

4. The contention of the learned counsel for the petitioner is that the penalty of stoppage of increment with cumulative effective is a major penalty and that therefore, in the very nature of things, enquiry must have been conducted. In this case, the impugned order is liable to be set aside since the judgment of acquittal dated 04.09.2012 in S.T.C.No.133 of 2012 passed by the learned Judicial Magistrate No.1, Nagapattinam was not taken into account.

5. Per contra, Mr.D.Sivaraman, learned standing counsel for the respondent Corporation would contend that the punishment imposed on the petitioner falls under clause 25(1)(iii) of the certified standing orders and as per clause 26(vi), enquiry is not necessary. He would also point out that the writ petitioner did not even bother to offer his denial in response to the charge memo. He therefore wanted this Court to sustain the impugned order.

6. No doubt, service conditions of the employees like writ petitioner are governed by the standing orders for the employees of Cholan Roadways Corporation Limited, Kumbakonam. Clause 25(1) reads as under:

"25. Punishment for Misconduct:

1. The following shall be the prescribed punishment that may be awarded to workman, guilty of misconduct.

i. Censure

ii. Fine: Subject to the provisions of Payment of Wages Act.

iii. Stoppage of increments: Stoppage of increments with or without cumulative effect.

iv. a) Recovery from wages whole or part of any pecuniary loss, caused to the Corporation by the negligence of breach of orders of the workman.

b) Recovery from pay to the extent necessary of the monetary value equivalent to the amount of increment ordered to be withheld where such an order cannot be given effect to.

c) recovery of from pay to the extent necessary of the monetary value equivalent to the amount of reduction to a lower stage in a time scale ordered where such an order cannot be given effect to.

v. Suspension not exceeding 30 days.

vi. Demotion to lower post or lower grades. No workman



shall be demoted to any post or grades lower than to which he was initially recruited under the Corporation.

Vii. Compulsory retirement

viii. Removal from service or discharge.

ix. Dismissal from service.

x. Any of the above in case of accidents where driver is found to be guilty.

Clause 26(vi) reads as under:

"26. The following proceedings shall be followed before awarding punishment to any workman:

i.

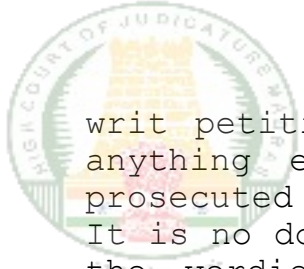
ii. To v.

vi. a. When the charge has not been admitted an enquiry shall be conducted, if so desired by the workman in cases involving major punishment defined in items V to IX of S.O.25.

b. No such enquiry will be necessary in cases involving minor punishment defined in items (i) to (iv) of S.O.25."

7. The pointed contention raised by the learned counsel for the respondent is that the penalty imposed on the petitioner falls within the clause 25(1)(iii) of the standing order. Since it has been specifically stated that enquiry is not necessary in cases involving minor punishment defined in items (i) to (iv) of S.O.25, the submission of the writ petitioner is liable to be rejected. I am not persuaded to accept the said argument. Clause 26(vi) of S.O. only states that in cases involving major punishment defined in items (vi) to (ix) of S.O.25 enquiry shall be conducted if so desired by the workman. Clause 26(vi)(b) states that no such enquiry will be necessary in cases involving minor punishment defined in items (i) to (iv) of S.O.25. The said clause only states that such enquiry will not be necessary in cases involving minor punishment defined in items (i) to (iv). There is no specific prohibition or exclusion of holding of enquiry even in cases falling under clause 26(vi)(b). Since stoppage of increment having cumulative effect is having an impact on the pay of the workman till the retirement and even thereafter on his pension, one has to necessarily come to the conclusion that it is a major penalty. This court can take judicial notice of the fact that in the discipline and appeal rules governing employees in all other departments, such a penalty is construed only as a major punishment. Fairness requires that enquiry is conducted in such cases. Even though standing orders in question would take the position that enquiry is not necessary, this Court is inclined to read the principles of natural justice into the said provision.

8. In this case, the writ petitioner in response to the second show cause notice had specifically taken the stand that non holding of enquiry had vitiated the entire proceedings. He had not admitted the charges framed against him. Therefore, there is no merit in the submission of the learned standing counsel appearing for the respondent that in view of the non submission of explanation by the



writ petitioner, there was no need to hold an enquiry. More than anything else, in this case, the writ petitioner was formally prosecuted before the competent criminal Court and he was acquitted. It is no doubt true that the disciplinary authority is not bound by the verdict of the criminal Court. But, the judgment of the acquittal is certainly a relevant material and that has to be taken into account. The failure to take into account the judgment of acquittal dated 04.09.2012 in S.T.C.No.133 of 2012 vitiates the impugned order. The explanation submitted by the writ petitioner in paragraph No.11 draws the attention of the disciplinary authority to the said judgment of acquittal. There is absolutely no consideration of the said explanation.

9.This Court had carefully gone through the impugned order dated 30.04.2014. It is absolutely non speaking. The second respondent has merely stated that the explanation given to the petitioner was considered and found not acceptable. Such a summary rejection of the explanation more so when there is a judgment of acquittal in his favour is clearly improper. The impugned order is therefore set aside.

10.The writ petition stands allowed. No costs.

Sd/-

Assistant Registrar (AS)

/True copy/

Sub Assistant Registrar

+1cc to Mr.A.RAHUL, Advocate, SR.42800

W.P (MD) No.17463 of 2014
18.01.2018

ARUL

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