



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :04.09.2018

CORAM:

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THE HONOURABLE Mr.JUSTICE S.VAIDYANATHAN

W.P.(MD)No.19067 of 2018

and

W.M.P.(MD)No.16917 of 2018

K.Annadurai

... Petitioner

Vs.

1.The General Manager,
Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Pudukottai Region,
Pudukottai.

2.The Branch Manager,
Pudukottai Mofussil Branch of
Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Pudukottai Region,
Pudukottai.

3.The Enquiry Officer,
Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Pudukottai Region,
Pudukottai.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the 3rd respondent in enquiry No.D3/2661/2018, dated 21.07.2018 and the impugned order of the 1st respondent in reference TNSTC / TS/2661/15, dated 24.08.2018, quash the same and consequently, direct the first respondent to conduct fresh enquiry by appointing some other enquiry officer other than the 3rd respondent and by confining the charge of absence from duty alleged against the petitioner in the charge memo dated 21.11.2014 of the 1st respondent from 13.09.2014 to the date of issuing of the same or in any event upto only 16.02.2015 and after paying him subsistence allowance for the period from 17.02.2015 and also after taking decision as to permitting him to work in coming days pending the disciplinary proceeding.

For Petitioner : Mr.S.Arunachalam

For Respondents : Mr.D.Sivaraman

**O R D E R**

Mr.D.Sivaraman, learned standing counsel takes notice for the respondents. By consent, this Writ petition is taken up for final hearing at the admission stage itself.

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2.This Writ petition has been filed for the aforesaid relief.

3.The case of the petitioner is that when he was working as a Driver in the respondents / Corporation, on 01.03.2003 he caused an accident. Due to which, a case in Crime No.19 of 2003 has been registered by Arimalam Police Station and also the first respondent has initiated disciplinary proceedings by issuing charge memo dated 25.04.2003. In the said criminal case, the petitioner has been convicted and sentenced to undergo one year simple imprisonment along with fine amount of Rs.2,000/-. The said order went upto Supreme Court. However, the order of the court below has been confirmed by this Court and also the Hon'ble Supreme Court. Thereafter, the petitioner has undergone imprisonment for 4 months.

4.When the petitioner was in prison, the first respondent issued a charge memo dated 21.11.2014 stating that the petitioner has absented from duty from 13.09.2014 onwards. After undergoing the period of imprisonment, the petitioner came out from prison and approached the respondents / Corporation on 17.02.2015 for reporting duty. However, the 1st respondent has not permitted the petitioner to attend duty. Hence, he has sent representations on various dates requesting to provide duty. As there was no response, he has filed a Writ petition in W.P.(MD)No.21020 of 2015 seeking to provide duty. After filing the said Writ petition, on 17.04.2018 1st respondent has issued an enquiry notice to the petitioner asking him to appear for enquiry. Accordingly, the petitioner has appeared for enquiry before the Enquiry Officer and requested to pay subsistence allowance.

5.In the mean time, the petitioner has suffered with heart ailment and that he underwent treatment at Government Medical College Hospital, Pudukottai for such ailment and the same has been informed to the respondents by sending a representation on 27.06.2018 along with medical records. Unfortunately, ignoring the request of the petitioner, the 3rd respondent / Enquiry Officer, sent an ex parte enquiry report dated 21.07.2018. Thereafter, on 24.08.2018 the first respondent has also issued the impugned notice to the petitioner.

6.The grievance of the petitioner is that such impugned report of the 3rd respondent and the impugned notice of the 1st respondent are unjust and hence, a fresh enquiry has got to be conducted by



providing opportunity of hearing to the petitioner.

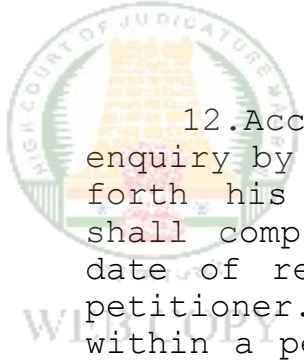
7.The learned counsel for the petitioner would submit that the entire procedure followed by the respondents with regard to the conduct of enquiry itself is vitiated as the petitioner was all along willing to report for work, which fact has not been referred to in the reply of the respondents dated 19.06.2018.

8.Even though no counter affidavit has been filed by the respondents, the learned standing counsel appearing for the respondents would contend that the petitioner has caused a fatal accident, for which, criminal proceedings and also departmental action have been initiated against the petitioner and even though opportunity hearing has been provided to the petitioner, he has not reported to such enquiry by adopting dilatory tactics in order to evade the enquiry. He would further submit that the representation of the petitioner dated 27.06.2018 has been addressed to the General Manager and a copy of the same has not been sent to the Enquiry Officer. Nothing prevented the petitioner from giving explanation to the said show cause notice to such officer and hence, it is for the Disciplinary Authority to consider the request as the Enquiry Officer is a different person from the Disciplinary Authority.

9.Heard the learned counsel for the petitioner and the learned standing counsel appearing for the respondents.

10.The fact that the petitioner has caused fatal accident, for which, he has been imprisoned for nearly 4 months. Further, he has been also issued with a charge memo, for which, enquiry has been conducted and an ex parte order has been passed by the respondents. More over, the petitioner has sent representations to the respondents, which do not yield any result and that he has filed a Writ petition in W.P.(MD)No.21020 of 2015 and the same is pending before this Court. It is pertinent to note that the Enquiry Officer has not referred to the said Writ petition in his report dated 19.06.2018. Even though the petitioner has contended that he has participated in all the enquiry, the submission of the learned standing counsel for the respondents before this Court is that the petitioner has sent his representation to Disciplinary Authority with regard to his ill-health, treatment undergone by him and also his willingness to report to duty.

11.In any event, the petitioner is willing to participate in a fresh enquiry that may be conducted by the respondents as the present one is an ex parte enquiry, which was conducted after he suffered with heart ailment. Once explanation is given by the petitioner, the Disciplinary Authority has to consider the case and submit a report before taking a final decision on the enquiry report.



12. Accordingly, the respondents are directed to conduct a fresh enquiry by providing sufficient opportunity to the petitioner to put forth his contention and thereafter, the Disciplinary Authority shall complete the enquiry within a period of one month from the date of receipt of the explanation that may be submitted by the petitioner. The petitioner is directed to submit his explanation within a period of two weeks from the date of receipt of a copy of this order.

13. Before conducting enquiry, it is open to the respondents either to place the petitioner under suspension or to provide him employment and proceed with the enquiry. The petitioner would be entitled to subsistence allowance from the date of suspension order and he will not be entitled to the arrears of wages or any other benefits till the enquiry is completed. The enquiry shall be conducted on day-to-day basis without adjourning the same beyond five working days at any point of time. If for any reason, the petitioner prolongs the enquiry, the respondent shall continue to pay only 50% of the subsistence allowance after recording reasons and the petitioner is not permitted to approach the Court intermittently and try to stall the enquiry proceedings and he can question the final orders of the Disciplinary Authority in case of any adverse orders being passed by way of appeal and thereafter approach the appropriate forum for redressal.

14. This Writ petition is disposed of accordingly. No costs. Consequently, connected W.M.P. is closed.

Sd/-
Assistant Registrar(cs-I)

/True Copy/

Sub Assistant Registrar(cs-II)

To

1. The General Manager,
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Pudukottai Region,
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3.The Enquiry Officer,
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Pudukottai Region,
Pudukottai.

+1cc to Mr.D.Sivaraman Advocate in SR.No.82154

+1cc to Mr.S.Arunachalam Advocate in SR.No.82425

W.P. (MD) No.19067 of 2018
04.09.2018

NBJ

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