

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.10362 of 2006

P.Subramaniam

... Petitioner

Vs.

1.The Special Commissioner
& Secretary to Government
Transport Department
Fort St.George, Chennai 600 009

2. The General Manager
Tamil Nadu State Transport
Corporation (Salem - Division 1) Ltd.,
Salem - 7.

3. The Managing Director
Tamil Nadu State Transport
Corporation (Salem - Division 1) Ltd.,
Salem - 7. ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the respondents culminating to the impugned order No.520/19803/d4/t/a.po.ka/2002 dated 13.2.2003 passed by the second respondent confirmed by the third respondent in his order No.175/520/19803/t4/tha.a.po.ka/2004 dated 27.08.2004 and quash the order of the third respondent dated 27.08.2004.

For Petitioner : Mr.C.Gauhamaraj
for Mr.R.Sunil kumar
& Sundar Narayanan

For Respondents : Mr.D.Suriyanarayanan
Additional Government Pleader
for R1
M/s.Rajeni Ramadoss for R2 & R3
Special Government Pleader

O R D E R

This writ petition is filed seeking for the writ of certiorari to quash the impugned order dated 13.02.2003 passed by the 2nd respondent and confirmed by the 3rd respondent, by order dated 27.08.2014.

The brief facts necessary for the disposal of this writ petition are as follows:

2. The petitioner was employed as a Driver in the Transport Corporation. An accident occurred on 23.07.2002 when the bus driven by the petitioner collided with a TVS 50 vehicle and caused damage to the bus, the TVS 50 vehicle and also caused injuries to the rider of the TVS 50 Vehicle. Thereafter, it appears that the bus was taken to the Motor Vehicle Inspector, who submitted a report dated 24.07.2002 specifying the following defects:

1. Front fibre bumper broken
2. Front number plate damaged
3. Steering very tight
4. Steering ply excessive
5. Vehicle pulling right side when brake is applied

He further submitted that the vehicle cannot be put to use in a public place without the permission of the registration authority or the Motor Vehicles Inspector.

3. Pursuant to the same, a charge memo dated 16.08.2002 was issued to the petitioner for rash and negligent driving and for causing damage to the reputation of the Transport Corporation. In response thereto, the petitioner submitted a representation dated 11.09.2002, wherein he submitted that police investigation is going on, in respect of the accident and that until the police enquiry is concluded, the domestic enquiry should not be proceeded with. Thereafter, it appears that based on the findings of the enquiry officer, the disciplinary authority passed an order dated 13.02.2003 and imposed the minor penalty of stoppage of increment for one year without cumulative effect. This order was challenged by the petitioner before the appellate authority and the appellate authority, by an order dated 27.08.2004, confirmed the order of the 2nd respondent dated 13.02.2003. These two orders dated 13.02.2003 and 27.08.2004 are impugned in this writ petition.

4. The learned counsel for the writ petitioner submitted that it is not possible for the bus to suffer such extensive damage, as recorded in the Motor Vehicle Inspection report dated 24.07.2002, on account of the

collision of the bus with a TVS 50 motor vehicle. According to the learned counsel for the writ petitioner, the vehicle was already in a damaged condition. He also pointed out that, as per the counter affidavit filed by the 3rd respondent, the enquiry officer concluded that both the petitioner and TVS 50 rider are at fault in the accident. It is further submitted that the petitioner was not provided with a copy of the enquiry officer's report, which caused prejudice to him. He also submitted that the appellate authority did not provide adequate opportunity and that he mechanically confirmed the order of the disciplinary authority without independently applying his mind. He relied on the judgment of the Supreme Court in South Bengal State Transport Corporation Vs Sapan Kumar Mitra and others (2006) 2SCC 584 and the paragraph nos. 14 & 19 thereof are extracted here under,

"14. Applying the principles laid down by the Constitution Bench, it cannot be denied that the learned Single Judge was justified in sending the case back to the disciplinary authority and ordering him to supply a copy of the inquiry report along with the report of the District Magistrate and other documents relied upon by him to Respondent 1 and thereafter to proceed from that stage after seeking comments on those reports from Respondent 1 to reach a fresh conclusion. We are of the view that at the appellate stage, the Division Bench was not justified to short cut the procedure by going into the merits on the question of removal from service of Respondent 1 particularly when the learned Single Judge had not decided the case of Respondent 1 on the question of removal on merits and when the disciplinary authority had passed the order of removal practically relying on the inquiry report, a copy of which was not supplied to Respondent 1 for filing comments. It is well settled that the inquiry officer and disciplinary authority are the sole judges of facts. Adequacy and reliability of the evidence is not a matter that can be canvassed before a High Court in a writ proceeding under Article 226 of the Constitution.

19. There is yet another aspect which is to be considered by us before we conclude this judgement. From a bare perusal of the order of the Division Bench, we find that the Division Bench also found that the findings of the disciplinary authority in passing the order of removal were perverse. We are unable to agree with this view of the Division Bench. In *Roshan Di Hatti v. CIT* this Court, while considering the question of perversity of a finding, held that when the finding of fact was arrived at without any material or upon a view of the facts which could not reasonably be entertained or the facts found were such that no person acting judicially and properly instructed as to the relevant law would have come to that determination, the decision can be said to be perverse. It is, however, true that if perversity is shown and proved, it would be open to the writ court to hold as such. But, in our view, this was not a case of perverse finding. It appears that the disciplinary authority on consideration of the reports of the inquiry officer and the District Magistrate and evidences adduced before them, came to a conclusion of fact that it was that it was due to rash and negligent driving of Respondent 1, the accident had occurred. "

5. According to the learned counsel for the writ petitioner, the said Judgment would apply to the facts of the instant case, because, the report was not provided by the enquiry officer and the petitioner was also not provided with adequate opportunity before the appellate authority.

6. In response, the learned counsel for the respondent Corporation invited the attention of this court to page no. 4 of the counter affidavit of the third respondent and pointed out that it is incorrect to state that a case was not registered by the Police. She submitted that a criminal case was registered against the petitioner under Sections 279, 307 and 339 of the IPC in Crime No.606 of 2002. In addition, she submitted that on receipt of the charge memo, in his explanation dated 11.09.2002, the petitioner merely contended that the departmental proceedings should not be

proceeded with, when the police investigation is pending. The third submission made by the learned counsel for the respondent is that the enquiry was duly conducted and that the charges framed against the petitioner were proved. Accordingly, it establishes that the damage to the vehicle was caused by the petitioner and, therefore, the petitioner is responsible for the same.

7. The affidavit, counter affidavit and documents have been carefully considered.

8. It is the admitted position that the petitioner was driving the bus when the accident took place on 23.07.2002. It is also an admitted fact that the Motor Vehicles Inspector's Report was submitted on 24.07.2002, which is one day after the accident and that this report shows that the bus suffered extensive damage. It is also admitted that the petitioner received the Charge memo on 16.08.2002 in respect of the disciplinary proceedings for imposition of minor penalties. As per the service rules of the Respondent and the settled law on the subject, it is not necessary to conduct a departmental enquiry in respect of minor penalties. In spite of that, a departmental enquiry was conducted in this case and the explanation of the Petitioner was considered at the enquiry. It is relevant to note that the petitioner did not deny that he was driving the vehicle when the accident occurred and the principal request in his representation dated 11.09.2002 is that the departmental proceedings should not be proceeded with until the conclusion of the police investigation. In this regard, it is the settled legal position that departmental enquiry proceedings are different from criminal proceedings with different standards of proof and quality of evidence being required in the two proceedings. Therefore, this contention of the petitioner cannot be countenanced.

9. The judgement of the Supreme Court in (2006) 2 SCC 584 does not advance the case of the Petitioner. It is a case relating to the major penalty of removal from service and due process during the enquiry and thereafter is critical in such cases. With regard to the submission that a copy of the enquiry report was not provided to the petitioner, in view of the following facts it is a minor penalty in respect of which an enquiry is not required as per law; and the petitioner appeared in person before the Disciplinary Authority and filed an appeal, it is concluded that there are no infirmities in the impugned orders passed by the second and third respondents and the same are not liable to be set aside.

10. Accordingly, the present writ petition stands dismissed. There shall be no orders as to costs.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

kmm
To

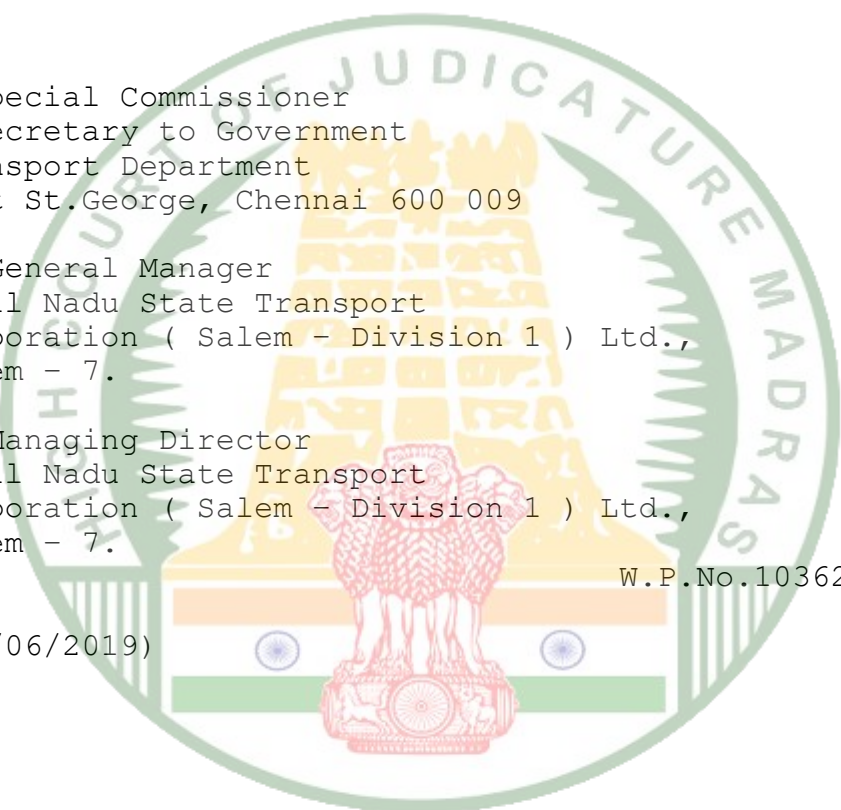
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A.SK(21/06/2019)

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion standing in front of it. The lion is facing forward and is flanked by two smaller lions. The entire emblem is set against a green background with a white border. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a circular path around the central emblem. Below the emblem, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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