

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 26.03.2019

Delivered on : 03.04.2019

CORAM:

THE HONOURABLE MR. **JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.49812 of 2006
and
W.M.P.No.1 of 2006

K.Rajendran

... Petitioner

Vs.

Tamil Nadu State Transport
Corporation Ltd.,
rep. by its Managing Director,
Ramakrishna Road,
Salem- 636 007.

... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari cum Mandamus, calling for the records from the Respondent relating to his Order bearing Ku.No.A127-170-27686 D1-TSTC-2005 dated 02.06.2006 which confirms the order of punishment bearing No.170-27686-D1-TSTC-2005 dated 21.03.2006 and quash the said Order dated 02.06.2006.

For Petitioner : M/s.S.Ayyathurai

for Mr.Sellapandian

For Respondent : M/s.Rajeni Ramadoss

ORDER

This Writ Petition is filed for a Writ of Certiorari to quash the Order bearing Ku. No.A127-170-27686 D1-TSTC-2005 dated 02.06.2006 which confirms the order of punishment bearing No.170-27686-D1-TSTC-2005 dated 21.03.2006.

2.The case of the Petitioner is that he joined the services of the Respondent in May 1985 as a driver and that he diligently discharged his duties. He further states that while on duty, the vehicle that he was driving met with an accident on account of the rash and negligent driving by a lorry driver and the lorry driver is said to have accepted his responsibility and paid a fine for the accident. As a result, the Petitioner suffered multiple fractures in both legs and steel plates had to be fixed therein. Upon recovery, the Petitioner reported for work and requested that he be given light duty.

3.In November 2001, the transport workers of the Respondent went on strike demanding payment of bonus. As a branch Secretary of

the Union of Labour Progressive Front with an affiliation to the DMK, the Petitioner participated in the said strike which was subsequently withdrawn on 25.11.2001. Thereafter, the Petitioner reported to work and he was asked to drive buses. He pointed out that earlier he had been given light duty and that it was not fair on the management to direct him to drive buses. The Branch Manager asked him to come back after two days.

4. According to the Petitioner, thereafter, at the instance of the leaders of another union with political affiliation to the AIADMK, the management started victimising union activists belonging to the Labour Progressive Front and the CITU by foisting false charges. In fact, a memo dated 24.11.2001 was issued to the Petitioner and the Petitioner was placed under suspension on the basis of false charges. The Petitioner submitted an explanation denying the said charges. However, the management conducted a farcical enquiry and dismissed the Petitioner from service.

5. The Petitioner raised a dispute relating to his dismissal from service and the same was taken on file by the Labour Court, Salem, as ID No.367/2002 and an award dated 07.01.2004 was pronounced

therein directing the Respondent to reinstate the Petitioner without back wages but with continuity of service and other attendant benefits. The management filed W.P.No.34976 of 2004 against the said order and the same is pending before this Court. By order dated 20.04.2005, this Court directed the management to pay the Petitioner the full last drawn wages, including arrears thereof. Thereafter, the Respondent directed the Petitioner to report for work and the Petitioner did so on 27.05.2005. Once again, the Petitioner was directed to drive a bus although he could not do so on account of his earlier accident.

6. On 07.06.2005, the Petitioner was on duty in the town bus bearing No.TN-27-10-0645. At around 8.30 PM while the Petitioner was driving the bus on a narrow bridge after dropping off the passengers, a Maruti car driven in a rash and negligent manner hit the bus and the driver of the car sustained minor injuries to the hand. The Petitioner states that if he had not stopped the vehicle, the damage would have been greater. Thereafter, the management issued a charge memo dated 18.07.2005 and the Petitioner submitted an explanation refuting the charges. According to the Petitioner, once again, the management conducted a farcical enquiry. By drawing reference to the evidence of the conductor at paragraphs 8 and 9 on

page 13 of the typed set of papers filed by the Petitioner, it was submitted that the conductor did not say that the driver drove the bus in a rash and negligent manner but his evidence was ignored at the enquiry. Instead, a second show cause notice was issued proposing the punishment of increment cut with cumulative effect. The Petitioner submitted his explanation thereto on 05.01.2006. In the meantime, a criminal case was filed against the Petitioner in respect of the said accident and it was registered as C.C. No.269/2005 on the file of the learned Judicial Magistrate No.I, Mettur Dam. The said criminal case ended in the acquittal of the Petitioner vide judgement dated 24.02 2006.

7. On receipt of a copy of the judgment of the Criminal Court, the Petitioner produced a photocopy of the same to the General Manager, who is the Disciplinary Authority. The General Manager directed the Petitioner to meet the Managing Director and produce a copy of the judgment acquitting the Petitioner of the charge of rash and negligent driving. Thereafter, the Petitioner filed an Appeal to the Managing Director once again enclosing a copy of the Judgement of the learned Judicial Magistrate No.I, Mettur. However, the Managing Director, did not consider the said judgment of the learned Judicial Magistrate and

passed an order dated 02.06.2006 dismissing the Petitioner's appeal. The said order dated 02.06.2006 is impugned in this Writ Petition.

8.The Respondent's case is that Criminal Proceedings and Departmental Proceedings are distinct and that the management is entitled to proceed with the Departmental Enquiry and punish the Petitioner notwithstanding the acquittal in the Criminal Case. It is also the case of the Respondent that the Petitioner has an alternative remedy and that the said remedy was not exhausted in the instant case. Accordingly, the Respondent submits that this Writ Petition is liable to be dismissed.

9.At the hearing, the learned counsel for the Petitioner submitted that the Petitioner was acquitted in the Criminal Case on 24.02. 2006 whereas the Disciplinary Authority punished the Petitioner by Order dated 21.03.2006. The learned counsel further submitted that the charges in the Disciplinary Enquiry are identical to that in the Criminal Proceedings and that, therefore, the acquittal in the Criminal Proceeding is significant and should have been taken into consideration while deciding the Departmental Enquiry. The learned counsel adverted to the judgment of the learned Judicial Magistrate and,

thereafter, to the Appeal to the Managing Director at page 20 of the typed set filed by the Petitioner. He pointed out that the judgment of the Criminal Court was annexed to the said Appeal dated 21.03.2006. He thereafter referred to the Impugned Order dated 02.06.2006 and pointed out that it is a completely unreasoned order which merely states that there are no reasons to reverse the order of the Disciplinary Authority.

10.The learned counsel for the Petitioner also referred to the Judgment of the Hon'ble Supreme Court in **TRAVANCORE RAYON LTD Vs. UNION OF INDIA reported in AIR 1971 SC 862** wherein the Hon'ble Supreme Court referred to several earlier decisions and held that it is essential that the Appellate Tribunal expressly or by reference to the judgment of the Original Tribunal provides reasons. He also referred to the judgment of the Hon'ble Supreme Court in **SIEMENS ENGINEERING AND MANUFACTURING COMPANY OF INDIA LTD Vs. UNION OF INDIA reported in AIR 1976 SC 1785**, wherein the Hon'ble Supreme Court held that a quasi - Judicial Order must be supported by reasons. On that basis, it was the submission of the learned counsel for the Petitioner that the Impugned Order is unreasoned and non-speaking and, therefore, liable to be set aside.

11. On the contrary, the learned counsel for the Respondent submitted that Departmental Proceedings could be continued in spite of the acquittal in the Criminal Case. In order to substantiate the submission, she referred to the Judgment of the Hon'ble Supreme Court in **TNCS CORPORATION LTD Vs. K.MEERABAI reported in (2006) 2 SCC 255**, wherein the Hon'ble Supreme Court held that the law is well settled that acquittal by a Criminal Court does not preclude Departmental action if it is otherwise permissible. In the said Judgment, the Hon'ble Supreme Court further stated that the degree of proof which is necessary for conviction is different from the degree of proof necessary to record the commission of delinquency. She also referred to the enquiry report and pointed out that the principles of natural justice had been adhered to. She further submitted that the Petitioner did not exhaust the alternative remedy of approaching the Labour Court through the union. Accordingly, she submitted that the Writ Petition is liable to be rejected.

12. The affidavit filed by the petitioner, the documents on record and the oral submissions of both parties were carefully reviewed.

13. On perusal of the Order dated 02.06.2006 of the Appellate Authority, it is very clear that the said order does not contain any reasons. It merely states that on carefully examining the Appeal dated 22.05.2006, it does not contain any reasons to change the decision of the Disciplinary Authority dated 21.03.2006. In fact, it does not advert to the Judgment in the Criminal Case although the said Judgment was enclosed by the Petitioner. Therefore, the Judgments of the Hon'ble Supreme Court that were cited by the learned counsel for the Petitioner would apply squarely. In fact, it has been held in a catena of decisions that reasons are the heart and soul of decision-making. For instance, it was held, inter alia, as follows in **UNION OF INDIA Vs. MOHAN LAL CAPOOR, (1973) 2 SCC 836:**

".....Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached."

14. The Impugned Order dated 02.06.2006 does not pass muster as per the standard prescribed in the above judgment by the Hon'ble Supreme Court and is, therefore, liable to be set aside. In view of the

fact that the case is being decided on the limited issue that the Impugned Order is non-speaking, no views are expressed on the merits of the case.

15. In the result, this Writ Petition is allowed and the Impugned Order is set aside. However, the appeal of the Petitioner is remanded to the Appellate authority. The Appellate Authority shall provide a reasonable opportunity to the Petitioner, consider all the objections of the Petitioner, including the implications of the Criminal Court Judgment, and pass a speaking order within a period of three months from the date of receipt of a copy of this Order. There shall be no order as to costs. Consequently, connected W.M.P. is closed.

03.04.2019

Index : Yes
Internet : Yes
Speaking Order/Non speaking order
rrg

To

Tamil Nadu State Transport Corporation Ltd.,
rep. by its Managing Director,
Ramakrishna Road, Salem- 636 007.

SENTHILKUMAR RAMAMOORTHY, J.,
rrg

**Pre Delivery Order in
W.P.No.49812 of 2006**

03.04.2019