

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/1/2019

C O R A M

The Honourable Mr.Justice S.Manikumar
a n d
The Honourable Mr.Justice Subramonium Prasad

Writ Appeal No.2199 of 2018

A. Magudeeswaran ...Appellant/Petitioner

Vs

1. The Managing Director
Tamil Nadu State Transport Corporation
(CBE) Ltd
37 Mettupalayam Road
Coimbatore 641 043.

2. The General Manager
Tamil Nadu State Transport Corporation
(CBE) Ltd
37 Mettupalayam Road
Coimbatore 641 043.

...Respondents/Respondents

Prayer: Appeal filed under Clause 15 of Letters Patent against the order dated 30/7/2018 passed in W.P.No.35094 of 2015.

W.P.No.35094 of 2015

Prayer: Writ Petitions filed Article 226 of the Constitution of India praying to call for the records of the second respondent vide his proceedings in Reference - 1/G5/213/TNSTC/08/ dated 31.08.2015 and quash the same as illegal arbitrary and against the principle of natural Justice.

For appellant ... Mr.A.Rajendiran
For respondents ... Mr.P.Kannan Kumar

J U D G M E N T

(Judgment of the Court was made by Subramonium Prasad,J)

Aggrieved by the order of dismissal, dated 30/7/2018, passed in Writ Petition No.35094 of 2015, appellant/writ petitioner has

filed the instant Writ Appeal.

2. Facts of the case in brief are as follows:-

The appellant was working as a Driver, in Tamil Nadu State Transport Corporation (CBE) Limited. On 15/6/2008, around 7.50 p.m., when he was driving the bus of the respondent Corporation, an accident occurred with a Maruthi Van, bearing Registration No.TN10H-8506. Two persons died in the accident. A case, in Crime No.294 of 2008, was filed against the appellant, on the ground that he was driving the bus rashly and negligently. Disciplinary proceedings were initiated against the appellant for his mis-conduct. A charge memo was issued, on 25/7/2013. Since the explanation given by the appellant was not satisfactory, the respondent Corporation decided to conduct a domestic enquiry and thereafter the Enquiry Officer submitted his report. On 31/8/2015, the disciplinary authority, after perusing the documents, decided not to accept the findings, in the enquiry report. Notice was given to the appellant as to why the punishment of annual increment cut for three years with cumulative effect, should not be given to him. Notice, dated 31/8/2015 has been challenged by the appellant in Writ Petition No.35094 of 2015. Vide order, dated 30/7/2018, the learned Single Judge, dismissed the writ petition, holding that no writ petition can be entertained, against a show cause notice, unless exceptional circumstances are shown. Being aggrieved by the order of the learned Single Judge, the appellant has come forward to file the instant Writ Appeal.

4. Heard Mr.A.Rajendran, learned counsel for the appellant and Mr.P.Kannan Kumar for the respondent Corporation.

5. Mr.A.Rajendran, learned counsel for the appellant would submit that the accident was not caused due to the negligence of the appellant and that there was no reason for the disciplinary authority to deviate from the findings of the Enquiry Officer.

6. Learned counsel for the respondent Corporation would submit that after the dismissal of the writ petition, the disciplinary authority had imposed a punishment of annual increment cut for three years, with cumulative effect.

7. As rightly held by the learned Single Judge, the disciplinary authority can deviate from the findings of the Enquiry Officer for reasons and the disciplinary authority in this case had done so. No writ can be entertained against a show cause notice, unless it is established that the said show cause notice was issued, without jurisdiction or by an incompetent authority or that it was tainted with malafides. The Appellant can always challenge the findings of the disciplinary authority in the statutory appeal, as provided under the rules

and demonstrate that the reasons for deviating from the enquiry report were not strong and get the order of the disciplinary authority set aside. The remedy under Article 226 of the Constitution of India, is not the appropriate remedy, in view of the alternative remedy available to the appellant, which is equally efficacious.

8. In the result, Writ Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

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+1cc to Mr.A.Rajendiran, Advocate, S.R.No.4919
+1cc to Mr.P.Kannan Kumar, Advocate, S.R.No.4818

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SR(CO)
NR(14/03/2019)

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