

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. No. 684 of 2018
and
C.M.P. No. 6585 of 2018

1. The Managing Director,
Metropolitan Transport Corporation (Chennai),
Pallavan Illam,
Anna Salai,
Chennai - 600 002.
2. The General Manager,
Metropolitan Transport Corporation (Chennai),
Pallavan Illam,
Anna Salai,
Chennai - 600 002. Appellants/Respondents

-vs-

V. Muthuraj ... Respondent/Petitioner

PRAYER:- Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order passed by this Court in W.P. No. 6515 of 2013 dated 25.01.2017.

Prayer: Petition filed under article 226 of the constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the respondents especially the 2nd respondent relating to his proceedings made in Memorandum No.20651/Sa Pi (O Na) 1/ Ma Po Ka/2004 dated 15.12.2012 and quash the same as null and void illegal and invalid and consequently directing the respondents especially the 2nd respondent to re-instate the petitioner in service with all service and monetary benefits.

For Appellants : Mr. Rajini Ramadoss

For Respondents: Mr. A. Amalraj

J U D G M E N T

(Judgment of the Court was delivered by P.D. AUDIKESAVALU, J.)

The intra-Court Appeal arises out of the order dated 25.01.2017 in W.P. No. 6515 of 2013 passed by the Learned Judge of this Court. The parties are hereinafter referred to as per their description in the Writ Petition for the sake of convenience.

2. The Petitioner, who was working as Conductor in the Metropolitan Transport Corporation, Chennai, had been issued a charge memo No. 20651/Sapi(O.Na)13/Ma.Po.Ka/2004 dated 10.11.2004 for indulging in acts of indisciplined reprehensible conduct of misbehaving with a lady passenger while traveling in the bus route No. 52K on 01.11.2004 in violation of standing orders. In respect of the same incident, the Petitioner was prosecuted in criminal proceedings in C.C. No. 7275 of 2005 in the XIII Metropolitan Magistrate, Egmore, Chennai, and by judgment dated 13.11.2007, he was convicted for commission of offence under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998 and was sentenced to undergo six months rigorous imprisonment. On appeal, the V Additional Sessions Judge at Chennai by judgment dated 02.07.2009 in C.A. No. 277 of 2007 had upheld the order of conviction and modified the sentence into imprisonment till the raising of the Court and pay a fine of Rs.5,000/-. In the meanwhile, by order No. 20651/Sa Pi (O.Na) 1/ Ma Po Ka/2004 dated 16.12.2008, the Petitioner was imposed with the punishment of removal from service by the Second Respondent. The Petitioner had filed W.P. No. 16731 of 2009 for a direction to the First Respondent to pass orders in the departmental appeal preferred by him against the aforesaid order of removal from service, and this Court by order dated 22.12.2009 directed the First Respondent to consider the said appeal and pass orders within a period of four weeks from the date of receipt of copy of that order. The First Respondent confirmed the order of the Second Respondent by order dated 03.03.2010, which was challenged by the Petitioner in W.P. No. 14572 of 2010, and this Court by order dated 02.11.2011 set aside the order of removal from service and directed the matter to be decided afresh after furnishing a copy of the enquiry report to the Petitioner. The Second Respondent by order No. 20651/Sa Pi (O.Na) 1/MaPoKa/2004 dated 03.07.2012 once again imposed the punishment of removal from service with retrospective effect from 16.12.2008 and the Petitioner preferred departmental appeal against the same before the First Respondent. This Court by order dated 03.10.2012 in W.P. No. 26496 of 2012 filed by the Appellant for disposal of the departmental appeal before the First Respondent, set aside the order of the Second Respondent and directed a speaking order to be passed. Thereafter, the Second Respondent by order No.

20651/Sa Pi (O.Na.)1/MaPoKa/2004 dated 15.12.2012 removed the Petitioner from service, which was challenged by him in W.P. No. 6515 of 2013 before this Court.

3. The Learned Judge, who heard the Writ Petition, by order dated 25.01.2017 came to conclusion that the entire disciplinary proceedings was vitiated since the lady passenger and other co-passengers were not examined as witnesses despite the specific contention raised by the Petitioner in the representation made by him on the findings in the enquiry report and accordingly directed the Respondents to reinstate the Petitioner in service with all monetary benefits. Aggrieved thereby, the Respondents have preferred this appeal.

4. We have heard Mr. Rajini Ramadoss, Learned Counsel appearing for the Respondents, Mr. A. Amalraj, Learned Counsel appearing for the Petitioner and perused the materials placed on record, part from the pleadings of the parties.

5. We had expressed during the hearing on 08.03.2019 that we are unable to subscribe to the view of the Writ Court to exonerate the Petitioner from the charges merely on the ground that the lady passenger and other co-passengers had not been examined in the disciplinary proceedings, in the light of the dictum laid down by the Hon'ble Supreme Court of India in State of Haryana -vs- Rattan Singh (AIR 1977 SC 1512) that it could not be insisted that the passengers should be examined and it would suffice if the finding for the misconduct is supported by some reliable evidence. Further, it could not be disputed from the facts borne out of the record that the conviction of the Petitioner in the criminal proceedings, which has attained finality, was based on the evidence of the lady passenger with whom the Petitioner reportedly misbehaved as well as other co-passengers who had also deposed in that regard. However, in order to give a quietus to the long drawn litigation between the parties, it was suggested whether the Respondents could modify the punishment imposed on the Petitioner into one of compulsory retirement. On the next hearing on 14.03.2019, the Respondents filed an affidavit indicating that they have no objection for modifying the punishment into one of compulsory retirement which would be effective from 15.12.2012, which was the date on which the order of removal from service was passed.

6. Accordingly, in compliance of our further directions, the Respondents have produced an order No. 1060/PaPi(Po) 2/MaPoKa/2019 dated 02.04.2019 modifying the order of punishment to the Petitioner into one of compulsory retirement effective from 15.12.2012 and a cheque for Rs.1,99,625/- dated 29.04.2019

in favour of the Petitioner has been handed over to his Counsel under written acknowledgment towards full quit of subsistence allowance payable to him for the period from 16.12.2008 to 15.12.2012. As directed in our order dated 25.04.2019, the Petitioner shall be entitled to payment of arrears of pension amounting to Rs.4,61,316/- in four equated monthly installments commencing from June 2019, in addition to monthly pension payable to him every month from April 2019 onwards on the due dates.

7. In the result, the appeal succeeds and the order dated 25.01.2017 in W.P. No. 6515 of 2013 is set aside and the Writ Petition stands disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

vjt

To

1. The Managing Director,
Metropolitan Transport Corporation (Chennai),
Pallavan Illam,
Anna Salai,
Chennai - 600 002.
2. The General Manager,
Metropolitan Transport Corporation (Chennai),
Pallavan Illam,
Anna Salai,
Chennai - 600 002.

+1cc to Mr.S.Rajeni Ramadoss, Advocate, S.R.No. 41777
+1cc to Mr.A.Amal Raj, Advocate, S.R.No. 41758

W.A. No. 684 of 2018

BR(CO)
GN(20/05/2019)