



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.6267 of 2012

Sathees Victor

... Petitioner

vs.

The General Manager
Tamil Nadu State Transport
Corporation (Tirunelveli) Limited
Nagercoil Division

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records pertaining to the impugned order passed by the respondent in குறிப்பாணை எண்.7993/லீகல் 4/ஒழுங்கு/தநாஅபோக/2008, dated 25.11.2011, quash the same, and consequently direct the respondent to reinstate the petitioner as driver in the respondent corporation.

For Petitioner : Mr.R.Nandakumar

For Respondent : Mr.K.Sathiya Singh

O R D E R

The order of termination, dated 25.11.2011, issued by the respondent, is under challenge in the present writ petition.

2. The writ petitioner was initially appointed as a temporary Driver in the respondent / Transport Corporation on 24.07.2007. The writ petitioner, while performing his duty as driver in route No.239 from Thiruvaikuntam Bus Stand, at about 04.10 p.m., to Udankudi Village and while crossing a river bridge, dashed against a cyclist, who came in the opposite direction, resulted serious injuries to the cyclist and subsequently, the cyclist died on 21.12.2008. A criminal case was registered against the writ petitioner under Section 304(A) I.P.C., and the learned counsel for the writ petitioner states that the writ petitioner was acquitted from the criminal charges. The writ petitioner was placed under suspension on 31.12.2008 and a charge memo was issued on 04.02.2009. He submitted an explanation on 24.02.2009 and thereafter, an enquiry was conducted and based on the enquiry report, the writ petitioner was terminated from service based on the proved charges.

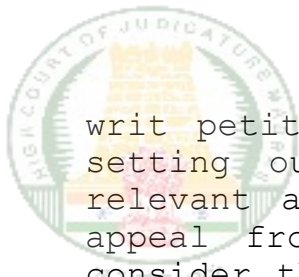


3. The learned counsel for the writ petitioner, relying on the Judgment of the criminal court of law, states that the writ petitioner was acquitted from the criminal charges and therefore, he is entitled to be reinstated in service.

4. The learned counsel for the respondent opposed the above contentions by stating that the charges against the writ petitioner were proved in the domestic enquiry and based on the proved charges, he was terminated from service. Thus, mere acquittal in the criminal case would not be a ground for reinstatement in service. Further, the writ petitioner was working as temporary driver during the relevant point of time and his services were not even regularized. Thus, the suitability of the writ petitioner to perform his duties and responsibilities as driver is also to be assessed. Under these circumstances, the writ petitioner is not entitled for any relief.

5. This Court is of the considered opinion that the acquittal from the criminal case undoubtedly is a supportive document for the writ petitioner. However, mere acquittal from the criminal charges would not confer any legal right to seek total exoneration from the departmental disciplinary proceedings. The procedures to be adopted in departmental disciplinary proceedings as well as in criminal case are distinct and different. High standard of proof as well as strict proof are required for the purpose of convicting a person under the criminal law. However, no such strict proof is required to punish a servant under the Discipline and Appeal Rules. Even preponderance of probabilities is sufficient to punish an employee under the Discipline and Appeal Rules. This being the distinct and different procedures to be adopted for the departmental disciplinary proceedings as well as the criminal case, this Court is of the considered opinion that mere acquittal from the criminal case would not confer any right on the delinquent official to seek total exoneration from the departmental disciplinary proceedings.

6. However, the respondent can reconsider the order of termination, if any new grounds are raised or materials are available, for the purpose of reconsidering the decision taken in the impugned order dated 25.11.2011. Undoubtedly, the suitability of a person to perform his duties and responsibilities as driver is to be assessed. The previous records of the writ petitioner are also to be taken note of. Considering all these factors, a decision is to be taken. Further, the writ petitioner, even at the time of termination, was serving as temporary driver and his services were not regularized. Under these circumstances, the writ petitioner is to be assessed properly with reference to his past records as well as the service particulars and a decision is to be taken by reviewing the earlier order of termination passed by the respondent in proceedings dated 25.11.2011. Under these circumstances, the



writ petitioner is at liberty to submit a detailed representation setting out all the facts and circumstances and the documents relevant and in the event of receiving any such representation / appeal from the writ petitioner, the respondent is directed to consider the same as well as the materials available on record and pass orders as expeditiously as possible, preferably, within a period of four months from the date of receipt of representation from the writ petitioner.

7. With these directions, the writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar(Crl. Side)

/TRUE COPY/

Sub Assistant Registrar

To

The General Manager
Tamil Nadu State Transport
Corporation (Tirunelveli) Limited
Nagercoil Division

+1 CC to M/s.M.R. SREENI VASAN, Advocate (SR-83792[F] dated 28/08/2019)

+1 CC to M/s.K.SATHIYA SINGH, Advocate (SR-84278[F] dated 29/08/2019)

W.P. (MD) No.6267 of 2012
27.08.2019

krk

JM/06.09.2019/3P/4C