



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.08.2019

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.13030 of 2014
and
M.P. (MD)Nos.2 and 3 of 2014

S.Ravichandran

... Petitioner

-Vs-

- 1.The Secretary to the Government,
Represented by its Home Secretary,
Transport Department, Secretariat,
Fort St. George, Chennai.
- 2.The Managing Director,
State Express Transport Corporation,
Head Office, Pallavan Salai,
Chennai-600 002.
- 3.The Branch Manager,
State Express Transport Corporation,
Trivandrum Branch, Thambanur,
Kerala State.
- 4.Manoharan
- 5.The Inspector of Police,
Prohibition Enforcement Wing,
Madurai City.

6.Kalaikathiravan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to the order passed by the second respondent in his proceedings in Ku.No.272/74753/DL2/AvPoKa/2006, dated 28.10.2008 and quash the same as unconstitutional.

For Petitioner : Mr.G.Karuppasamy Pandian

For R1 and R5 : Mr.M.Jeyakumar,
Additional Government Pleader.

For R2 and R3 : Mr.K.Sathiya Singh



For R4 : No Appearance
For R6 : Mr.S.Anwar Sameem

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ORDER

By enclosing a copy of incomplete shape of the impugned order dated 28.10.2008, the present Writ Petition is filed.

2.The order dated 28.10.2008 is sought to be quashed in the present Writ Petition.

3.The learned counsel appearing on behalf of the writ petitioner made a submission that the writ petitioner was appointed as a Driver cum Conductor in the State Express Transport Corporation and on account of certain serious allegations, he was placed under suspension in proceeding dated 18.01.2007. The writ petitioner submitted his explanation and in respect of other proceedings also, the writ petitioner submitted his explanations / objections. By not accepting the explanations submitted by the writ petitioner, the second respondent issued charge memo in proceeding dated 28.10.2008. The main charge against the writ petitioner was that the writ petitioner illegally transported 1180 liquor bottles in a car from Pudhuchery. The said illegal transportation of liquor bottles from Pudhuchery was widely published in the newspapers. Accordingly, the writ petitioner was directed to submit his explanation in respect of the charges.

4.The learned counsel appearing on behalf of the writ petitioner made a submission that the writ petitioner is serving as an official driver of one Tamilarasi, who was the then sitting Minister of Adi Dravidar Welfare Department.

5.The allegation of the writ petitioner is that the office of the first respondent in order to cause damage unnecessarily issued charge memo against the writ petitioner. However, the writ petitioner submitted a reply by stating that he is an innocent of the allegations and the said allegation in the charge memo is false and incorrect. A criminal case was also registered against the writ petitioner.

6.The learned counsel appearing on behalf of the writ petitioner made a submission that the writ petitioner was acquitted in the criminal case. Thus, the impugned order of termination is also to be scrapped. After conducting an enquiry, the impugned order of termination is passed.

7.The grounds raised by the writ petitioner are that the impugned order is in violation of Article 21 of the Constitution of



India and the second respondent has no jurisdiction to pass the impugned order. Except these grounds, there is no other ground with regard to the infirmity or otherwise of the impugned order, terminating the service of the writ petitioner.

8.The learned counsel appearing on behalf of the writ petitioner mainly contended that the writ petitioner was acquitted in the criminal case and therefore, the impugned order of termination is to be set aside.

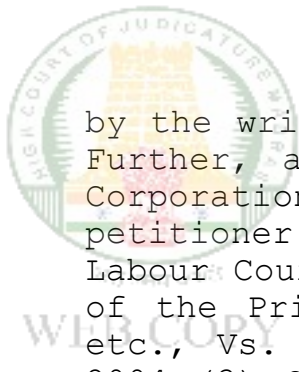
9.Mere acquittal in a criminal case is not a ground to seek exoneration from the disciplinary proceedings. Even in a case, where the delinquent public official is acquitted, the department may impose an order of punishment. To convict the person in the criminal law, high standard proof is required. Any benefit of doubt comes in favour of the accused. Thus, mere acquittal in the criminal case would not confer any right on the delinquent official to claim that he should be exonerated from the disciplinary proceedings also. As far as the disciplinary proceedings are concerned, preponderance of probabilities are enough to punish the employee. No such high standard proof is required.

10.The learned counsel appearing on behalf of the respondents 2 and 3 made a submission that more about 1180 liquor bottles were seized from the residence of the writ petitioner. The writ petitioner unnecessarily impleaded the Commissioner of Police in person. Despite the fact that the Commissioner of Police is no way connected with the seizure of the liquor bottle illegally kept in the residence of the writ petitioner nor connected with the affairs of the writ petitioner, the Commissioner of Police was impleaded in his personal capacity without any valid reason.

11.The departmental discipline authority conducted an enquiry and based on the documents available, the charges were framed against the writ petitioner and accordingly, punishment of termination was issued.

12.Though the learned counsel appearing on behalf of the writ petitioner states that no adequate documents were available to punish the writ petitioner, the present Writ Petition is filed along with the copy of the termination order alone. This apart, such disputed facts cannot be adjudicated by the High Court under Article 226 of the Constitution of India. All such disputed facts are to be adjudicated with reference to the original documents and by adducing evidences, if required. Contrarily, by enclosing copy of incomplete shape of the termination order, the present Writ Petition is filed to quash the said order and for reinstatement.

13.This Court cannot appreciate the filing of the Writ Petition in such a manner. This apart, the grounds on merits raised



by the writ petitioner cannot be adjudicated in a Writ proceedings. Further, against the order passed by the State Express Transport Corporation, an appeal remedy is also available and the writ petitioner being a workman is entitled to approach the competent Labour Court for adjudication of the disputes. Even the Full Bench of the Principal Seat of this Court in the case of P.Pitchumani, etc., Vs. The Management of Sri Chakra Tyres Limited, reported in 2004 (3) CTC 1 laid down the legal principles in paragraph No.14, which are extracted hereunder:-

"14.In view of what is stated supra, we hold that

(i) Only such violations under I.D. Act, which involve public duties, are amenable to Writ jurisdiction under Article 226 of Constitution of India;

(ii)dismissals, transfers and other matters concerning the service conditions of employees governed by I.D. Act, have to be adjudicated only by the forums created under the said statute and not otherwise;

(iii)it is needless to mention that the disputes relating to matters not governed by I.D. Act have to be resolved only by common law Courts;

(iv)the transfers effected in these cases do not involve any public duties and involve the disputed questions of fact and they should be resolved only before the forums under the I.D. Act;

(v)the appellants / petitioners-employees shall be entitled to seek for reference by filing application under Section 10 of the I.D. Act within two weeks from the date of receipt of a copy of this order;

(vi)if any industrial disputes are raised, then the concerned forums, be it Labour Court or Industrial Tribunal, shall dispose of the same within four months from the date of receipt of the reference, after affording opportunity to either party;

(vii)without prejudice to the contentions of the appellants/petitioners-employees, one week time from the date of receipt of a copy of this order is given to the employees to join at the transferred places and in respect to such of those dismissed employees, for non-joining at the transferred places, the delay is condoned if they join as stipulated above and in that event, dismissal orders passed against them disappear automatically; and

(viii)the respondents-managements shall



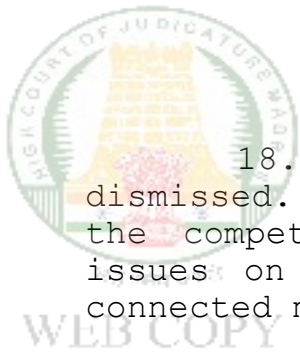
sympathetically consider the payments of wages/salaries to the appellants/petitioners-employees so as to maintain the industrial peace and harmony."

14. In view of the legal principles settled by the Full Bench, all such disputed facts are to be adjudicated by the respective parties before the competent Labour Court, as the issue involves examination of original documents and adducing evidences. This being the factum, this Court is of an opinion that the writ petitioner is not entitled to get relief as such sought for in the present Writ Petition.

15. The writ petitioner is unnecessarily impleaded the Commissioner of Police in his personal capacity and further, impleaded the Inspector of Police, Prohibition Enforcement Wing, Madurai City and the Inspector of Police, Prohibition Enforcement Wing, Melur Taluk, Madurai District. Such impleading of unnecessary parties, is to be deprecated. The parties, who are approached the Court of law, must approach for redressal of their grievances by impleading necessary parties alone. Unnecessary impleadment of the higher officials is to be contemned. Such an attitude and trend is increasing, in view of the fact that delinquent officials are attempting to demoralise the authority of the officials and to create some disturbance from performing their duties and responsibilities.

16. This Court is of the considered opinion that such authorities even after their impleadment as parties in personal capacity, they are bound to continue their duties and responsibilities in the interest of public at large and with full devotion. The Court cannot encourage such impleadment of unnecessary parties in a litigation. The present Writ Petition is filed, quashing the order of termination issued by the employer, namely, State Express Transport Corporation. The State Express Transport Corporation conducted independent departmental disciplinary proceedings and based on the records available, passed an order of termination. Thus, the Commissioner of Police and the Inspector of Police are the unnecessary parties, as far as the order of termination is concerned and the writ petitioner being served as a Driver with the then sitting Minister, impleaded the officers for the purpose of creating a fear in the mind of the officials, which can never be encouraged nor be accepted.

17. Though this Court has intended to impose costs for the unnecessary impleadment of the Commissioner of Police as party respondent in his personal capacity, considering the facts and circumstances that the writ petitioner had already been terminated from service, he is hereby warned not to indulge in such activities of impleading the higher officials in personal capacity without materials on records.



18. Recording the said warning, the Writ Petition stands dismissed. However, the writ petitioner is at liberty to approach the competent Labour Court for the purpose of adjudicating the issues on merits and seek redressal. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Home Secretary,
Secretary to the Government,
Transport Department, Secretariat,
Fort St. George, Chennai.

2. The Inspector of Police,
Prohibition Enforcement Wing,
Madurai City.

+1 CC to M/s.T.ANTONY ARUL RAJ, Advocate (SR-80525[F] dated 08/08/2019)

+1 CC to M/s.K.SATHIYA SINGH, Advocate (SR-80529[F] dated 08/08/2019)

+1 CC to M/s.SPL GP (SR-80733[F] dated 08/08/2019)

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