



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.5842 of 2014

and

M.P. (MD) Nos.1 and 2 of 2014

K.Iyyappan

... Petitioner

-Vs-

1.The Managing Director,
Tamil Nadu State Transport Corporation,
Tirunelveli District.

2.The General Manager,
Tamil Nadu State Transport Corporation,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records in the impugned Charge Sheet cum Suspension order dated 02.06.2012 under proceeding No.D9100-Sa6-ONaP-TNSTC-Thili-12 and its consequential Show Cause Notice dated 17.03.2014, both on the file of the second respondent herein and to quash the same as illegal.

For Petitioner : Mr.K.R.Laxman

For Respondents : Mr.K.Sathiya Singh,
Standing Counsel.

ORDER

The charge sheet cum suspension order dated 02.06.2012 as well as second show cause notice dated 17.03.2014 are under challenge in the present Writ Petition.

2.The writ petitioner is working as Driver in the respondent Transport Corporation. He joined in service on 03.10.2010. While the writ petitioner was discharging his service as Driver on 24.06.2012, the bus bearing Registration No.TN 72 0952 met with an accident. A case was registered against the writ petitioner and the victim also filed a Claim Petition before the Motor Accidents Claims Tribunal (hereinafter referred to as 'the Tribunal') in M.C.O.P.No.560 of 2012. The pillion rider one minor Madhavan also filed Claim Petition in M.C.O.P.No.559 of 2012.

3.The main contention of the writ petitioner is that the Transport Corporation has taken a stand before the Tribunal that the driver has not committed any negligence. In view of the fact that the Transport Corporation has taken a stand that the driver has not committed any negligence and he is not responsible for the



accident, then disciplinary proceedings ought not to have been initiated against the writ petitioner at all. Relying the said proposition, the learned counsel appearing on behalf of the writ petitioner cited the judgment of the Division Bench of this Court in the case of **Tamil Nadu State Transport Corporation Vs. P.Karuppasamy** reported in **(2008) 1 MLJ 694**. The relevant paragraph of the said judgment is extracted hereunder:-

"24.The principles laid down in the aforesaid rulings are squarely applicable to the facts of the present case. The appellant Corporation, having taken a plea that the driver of the bus was not responsible for the accident, could not turn around to say that he was responsible for the accident. As such, it is very much bound by the pleadings raised by it before the Tribunals and this Court. The law is well settled as to the aspect that the standard of proof in both the proceedings before the Criminal Court and the domestic enquiry officer are entirely different. However, since the Corporation has consciously raised the contention in favour of the bus driver before the judicial fora, it is precluded from proceeding against him in departmental proceedings. Though the extent of proof is sufficient to the commission of delinquency in the matter of departmental proceedings, the management could not lay its hands on the workman, detrimental to his interest, after defending him before various judicial fora and accepting the findings of the Motor Accident Claims Tribunal, Karur. Further, in the dismissal order, dated 09.12.1998, it is mentioned that even though a scrutiny of the service records would show that the respondent was not at all penalised at any point of time, since he caused a fatal accident, it was proposed to dismiss him from service, which shows that the past records of the respondent were also clean."

4.Relying on the said judgment, the learned counsel appearing on behalf of the writ petitioner states that the very initiation of disciplinary proceedings are untenable.

5.The learned Standing Counsel appearing on behalf of the respondents states that disciplinary proceedings are to be initiated independently with reference to the misconduct committed by the employees. The proceedings before the Tribunal are independent as well as the disciplinary proceedings are also not connected with the Motor Accident Tribunal cases. Thus, the present Writ Petition filed challenging the show cause notice, is



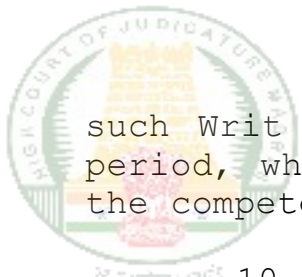
to be rejected.

6.It is further contended that the Writ Petition cannot be entertained on account of the fact that the writ petitioner is a workman and an enquiry was conducted by the department. Thus, he has to approach the Labour Court for the purpose of redressal of his grievance. On these grounds, it is urged that the Writ Petition is liable to be dismissed in *limine*.

7.Considering the submissions, this Court is of an opinion that the challenge made in the present Writ Petition is second show cause notice. As far as the charge memo cum suspension order is concerned, it is admitted that the enquiry proceedings had already been concluded. Thus, no purpose would be served in quashing the charge memo, as the charges have already been tried by the discipline authorities. Enquiry report also had been submitted. The second show cause notice was issued along with the enquiry report, seeking further explanation from the workman concerned. Instead of submitting his explanation / objections on the enquiry report, the writ petitioner has chosen to file the present Writ Petition for quashing all the proceedings.

8.No Writ proceedings can be entertained against the charge memo in a routine manner. The judicial review against the charge memo is undoubtedly limited. A charge memo can be challenged, if the same was issued by an incompetent authority having no jurisdiction, an allegation of *mala fide* is raised, if the same is in violation of statutory rules. Even in case of raising the allegation of *mala fide*, the authority against whom such an allegation is raised, has to be impleaded as a party respondent in the writ proceedings in his personal capacity. In the absence of any such legal grounds, no charge memo can be entertained by way of Writ Petition.

9.Intermittent intervention in the disciplinary proceedings is not preferable. If such interventions are allowed frequently by the High Courts, the disciplinary proceedings initiated against the employees cannot be concluded at all. The recent trend amongst the delinquent employees are that filing line of Writ Petition in order to frustrate the disciplinary proceedings or to prolong or protract the proceedings, so as to escape from the clutches of the proceedings itself. Such an attitude of the delinquent officials can never be encouraged by the High Courts. Even in case of certain procedural lapses in a routine manner, the same can be raised before the competent authorities or before the appellate authorities for rectification or redressal of the grievances. If such Writ Petitions are entertained, it would be very difficult for the authorities to conclude the disciplinary proceedings. Thus, the Court must be cautious in entertaining



such Writ Petitions, which are all filed during the intermittent period, where the disciplinary proceedings are in progress before the competent discipline authorities.

10.As far as the present case is concerned, the main ground raised by the writ petitioner is that the Transport Corporation is not liable for any compensation. Thus, they are not supposed to institute disciplinary proceedings.

11.Per contra, the learned Standing Counsel appearing on behalf of the respondents states that the writ petitioner is a workman and has participated in the pre-enquiry proceedings and therefore, he has to approach the competent Labour Court, if at all he is aggrieved from and out of any stand taken by the respondents.

12.This being the submission made before this Court, as the Writ Petition is filed challenging the second show cause notice in respect of allegation raised by the writ petitioner, the same cannot be adjudicated in a Writ proceedings. All such disputed facts are to be adjudicated with reference to the original documents and by adducing evidences, if required. Contrarily, the High Court cannot conduct any enquiry for the purpose of arriving a conclusion in respect of the defence taken by the Transport Corporation before the Tribunal. All these factors are adjudicated before the competent forum and the said adjudication cannot be done under Article 226 of the Constitution of India.

13.This being the factum, the writ petitioner is at liberty to submit his explanation / objections in respect of the allegation set out in the second show cause notice including judgment referred by the learned counsel appearing on behalf of the writ petitioner. In the event of submitting any such explanations / objections, the competent authorities, is at liberty to consider the materials available on record, including objections / explanations / judgments submitted by the writ petitioner and decide the matter on merits and in accordance with law. Thereafter, if the writ petitioner is aggrieved, as per the full bench judgment of the Principal Seat of this Court in the case of **Pitchumani Vs. The Management of Sri Chakra Tyres Limited** reported in **2004 (3) CTC 4**. he is at liberty to approach the competent authorities. It is made clear that the respondents are expected to dispose of the disciplinary proceedings as expeditiously as possible.

14.The delinquent officials cannot be compared with the proceedings pending before the Tribunal. The nature of procedures to be followed by the Tribunal is distinct and different. As far as the disciplinary proceedings are concerned,



no strict proof is required and preponderance of probabilities are sufficient to punish an employee.

15.This being the procedures to be adopted for the purpose of deciding the disciplinary proceedings as well as the Tribunal cases by the competent Court of law, this Court cannot come to the conclusion in respect of the defence taken by the Transport Corporations as well as the nature of the misconducts committed by the writ petitioner as an employee of the corporation.

16.With these observations, this Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Managing Director,
Tamil Nadu State Transport Corporation,
Tirunelveli District.

2.The General Manager,
Tamil Nadu State Transport Corporation,
Tirunelveli District.

+1 CC to M/s.K. SATHIYA SINGH, Advocate (SR-82712[F] dated
21/08/2019)

+1 CC to M/s.K.R. LAXMAN, Advocate (SR-82676[F] dated
21/08/2019)

MYR

W.P. (MD) No. 5842 of 2014
19.08.2019

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