



W.P.No.15267 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.15267 of 2022
and WMP No.14432, 14434 of 2022

D.Jayakumar

... Petitioner

Vs.

1. The Managing Director,
Tamil Nadu State Transport Corporation
(Salem Zone), No.12, Ramakrishna Salai,
Salem 636 007.
2. The General Manager,
Tamil Nadu State Transport Corporation
Salem Division, No.12, Ramakrishna Salai,
Salem 636 007.
3. The Branch Manager, Mettur Branch
Tamil Nadu State Transport Corporation
Mettur, Salem District.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari, calling for the records pertaining to the proceeding in i) the second respondent issued the final order in Ku.No.526-10539-T3-Tha.A.Po.Ka (Salem)-2018 dated 26.02.2020; ii) The 2nd respondent issued another charge memo in Kuruppanai No.153-2873-T3-Tha.A.Po.Ka-2021 dated 18.02.2021; iii) The second respondent issued the final order in Ku.No.153-2873-



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T3-Tha.A.Po.Ka (Salem)-2021 dated 11.05.2022 and quash the same.

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For Petitioner : Mr.Muruga Bharathi

For Respondents : Mr.C.Gauthamaraj

ORDER

This Writ petition has been filed seeking to issue a Writ of Certiorari quashing the orders passed by the second respondent dated 26.02.2020; 18.02.202 and 11.05.2022.

2. The case of the petitioner in brief.

The petitioner was working under the third respondent Corporation as a driver and his service was regularized with effect from 01.08.1998. During the year 2017, due to health issues, he was advised by the Doctor that he will not do any heavy work duty. The petitioner informed the same to the third respondent. Therefore, as per the advise of the management, the petitioner appeared before the Medical Board and they given a report dated 19.10.2017 that the petitioner was not fit for driver. Hence, the petitioner gave representation in July-2017 requesting to allot light day duty, instead of



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heavy duty. But the respondents did not consider the same. In the year 2018, the respondents once again referred the petitioner to Medical Board and that time also the Board had issued the same result. Thereafter, the petitioner was orally allotted duty as Time Keeper in Mecheri Bus Stand from 27.11.2020. After few months, once again the petitioner was referred to Rajiv Gandhi Government Hospital for medical examination, in which the same result was received by the respondent. But they did not give any alternative duty to the petitioner.

2.1. The contention of the petitioner is that, the second respondent issued a Charge memo dated 28.06.2018 and for the same, the petitioner had given his explanation. However, without considering his explanation, final order dated 26.02.2020 was passed, imposing punishment of stoppage of three increments. Thereafter, the second respondent issued another charge memo dated 29.09.2020 and for the same, the petitioner gave his explanation. Subsequently, the second respondent issued a show cause notice dated 11.05.2022, asking explanation for non attending duty from 02.02.2021, without any prior permission and intimation. According to the petitioner, though he gave



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representations, and the Medical Board reported that the petitioner is not fit for driver, the respondents have not allotted any alternative light duty to him and without considering the Report of the Medical Board, the second respondent had passed final order stopping three increments and further issued the charge memo and show cause notice. Hence, challenging the above, the writ petition has been filed.

3. The learned counsel appearing for the respondents submitted that for the impugned show cause notice dated 11.05.2022, the petitioner has given his explanation on 15.05.2022 and requested the respondents to quash the charge memo and also to revoke the punishment order passed against him. Therefore, at this stage, the writ petition is not maintainable.

4. According to the petitioner, all the representations and the explanations given by the petitioner have not been considered by the respondent and without considering his health issues and the Report of the Medical Board, the respondents have issued the show cause notice and punishment order and he was not given any alternative job.



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5. The prayer of the petitioner is to quash the following three orders.

- i) The final order dated 26.02.2020, stopping three increments.
- ii) The charge memo dated 18.02.2021.
- iii) The show cause notice dated 11.05.2022.

As far as the punishment order dated 26.02.2020 is concerned, in the order itself, it is stated that, if the petitioner is aggrieved over that order, he may prefer an Appeal before the Managing Director, within 90 days from the date of receipt of the order. It is pertinent to note that, the petitioner has submitted his grievance before the first respondent, seeking to revoke the above punishment order, vide representation dated 04.03.2020. Therefore, when the representation/appeal is pending before the Appellate authority/first respondent, this writ petition to quash the above punishment/final order, is not maintainable.

6. Further, the impugned charge memo dated 18.02.2021 was served to the petitioner asking to submit his explanation within four days. The petitioner has sent his detailed explanation and based on that, the respondent Corporation has proceeded further and issued the



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impugned show cause notice dated 11.05.2022. The petitioner has also submitted his explanations and the above proceedings is under progress.

7. At this juncture, it is worthwhile to note that in the case of ***Union of India v. Kunisetty Satyanarayana, reported in AIR 2007 SC 906***, the Hon'ble Apex Court, at paragraphs 13, 14 and 16, held as follows:

"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board v. Ramdesh Kumar Singh and Ors. [JT 1995 (8) SC 33], Special Director and Anr. v. Mohd. Ghulam Ghouse and Anr. [AIR 2004 SC 1467], Ulagappa and Ors. v. Divisional Commissioner, Mysore and Ors. [2001(10) SCC 639], State of U.P. v. Brahm Datt Sharma and Anr. [AIR 1987 SC 943] etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that, at that stage, the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not



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established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

(ii) In Ministry of Defence vs. Prabhash Chandra Mirdha, reported in 2012 (11) SCC 565, the Hon'ble Apex Court has held as follows:-

"Ordinarily a writ application does not lie against a charge sheet or show cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge sheet or show cause notice in disciplinary proceedings should not ordinarily be quashed by the Court."

8. In view of the legal principles settled, Writ Petition against the charge memo/show cause notice, cannot be entertained in a routine manner and judicial review against the charge memo or show cause



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notice is certainly limited. This being the factum, the writ petitioner has to participate in the process of enquiry and it is for the respondents to take steps for an early disposal of the disciplinary proceedings, as prolonged pendency is also against the delinquent officials. Further, the representations and the explanations with regard to the charge memo as well as the show cause notice are pending before the authorities concerned. Therefore, this court is not inclined to interfere with the charge memo and show cause notice.

9. Accordingly, the writ petition stands dismissed. No costs. No costs. Consequently, connected writ miscellaneous petitions are closed.

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Index:Yes/No
Internet:Yes/No
mst

To

1. The Managing Director,
Tamil Nadu State Transport Corporation
(Salem Zone), No.12, Ramakrishna Salai,
Salem 636 007.

2. The General Manager,



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D. KRISHNAKUMAR, J.

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