

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.09.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.20605 of 2022

and

W.M.P.(MD)Nos.14942 and 14943 of 2022

M.Jeeva Kumar

... Petitioner

Vs

1.The General Manager,
Tamil Nadu State Transport Corporation (Tirunelveli) Ltd.,
Tirunelveli Zone, Nagercoil Division,
Nesamony Nagar, Kanyakumari District.

2.The Assistant Manager,
Tamil Nadu State Transport Corporation (Tirunelveli) Ltd.,
Tirunelveli Zone, Nagercoil Division,
Ranithottai Branch – I, Nesamony Nagar,
Kanyakumari District.

3.The Branch Manager,
Tamil Nadu State Transport Corporation (Tirunelveli) Ltd.,
Tirunelveli Zone, Nagercoil Division,
Ranithottai Branch – I, Nesamony Nagar,
Kanyakumari District.

4.Junior Engineer,
Tamil Nadu State Transport Corporation (Tirunelveli) Ltd.,
Tirunelveli Zone, Nagercoil Division,
Ranithottai Branch – I, Nesamony Nagar,
Kanyakumari District.

5.J.Muthuswamy

6.S.Princy Prayerlet

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned impugned charge Memo issued by the 1st respondent General Manager in No.649/Legal-II/Discipline/ThaAPoKa/Ra-1/2022 dated 19.01.2022 and all proceedings in furtherance thereof, Quash the same as illegal and void.

For Petitioner : Mr.K.Ragatheesh Kumar,
For M/s.Issac Chambers.

For Respondents : Mr.D.Sebaraj,
Standing Counsel for R1 to R4.

ORDER

Heard the learned counsel on either side.

2.The petitioner challenges the impugned charge memo dated 19.01.2022 issued by the first respondent.

3.The writ petitioner is presently working as Senior Driver in the respondent corporation. Four articles of charge have been framed against the writ petitioner. They are as follows:-

“(i) On 11.01.2022 at Ranithottam Branch-I, you have involved into unnecessary arguments with Junior Engineer in service at night about break issues in the bus and you have captured in in your mobile and uploaded the same in Social Media and Face Book with an intention to derogate the dignity of State Transport Corporation.

(ii) The said bus had plied without any issues from 01.01.2022 to 10.01.2022. While so, you have uploaded a wrong statement in Social Media and in Facebook stating that the bus had some break issues.

(iii) You are irresponsible and negligent in work.

(iv) Your had committed mistake under Standing Order No.16(4) of TNSTC-TVL.”

Challenging the same, this writ petition has been filed.

4.The learned counsel for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to quash the same.

5.Per contra, the learned standing counsel for the transport corporation submitted that this Court in exercise of jurisdiction under Article 226 of the Constitution of India rarely interferes with a charge memo. Unless the charge memo has been issued by an authority who is not competent or for malafide considerations, this Court ought not to quash it. He also submitted that the charges cannot be said to be vague. The allegation against the writ petitioner is that he entered into an unnecessary controversy with a superior officer and spread false information about the employer in the social media. He also pointed out that the petitioner had earlier come to this Court by filing W.P. (MD)No.8604 of 2017 and that the same suffered dismissal on 17.08.2022. He submitted that the petitioner was furnished with all the documents which he sought. The enquiry was adjourned from time to time and it is now posted to 06.10.2020. The learned standing counsel stated that the petitioner will be given fullest opportunity to defend himself and that this Court can relegate the petitioner to face the enquiry. He called for dismissal of the writ petition.

6.I carefully considered the rival contentions and went through the materials on record. The primary ground urged by the learned counsel for the petitioner is that the charges are completely vague. I am not able to accept the said contention as regards charges 1 and 2. The misconduct attributed to the

writ petitioner are sufficiently clear and it is for the petitioner to establish his innocence in the domestic enquiry. However, charge Nos.3 and 4 are completely vague. They are bereft of any particulars. The third charge is that the petitioner conducted himself in a negligent and indifferent manner. The petitioner's counsel states that the petitioner was served with a one page charge memo. The charge itself must indicate how the writ petitioner had been negligent or indifferent. The details are not set out. Standing Order 16(4) reads that neglect of work or habitual negligence in duty would constitute an act of misconduct. In fact Articles 3 and 4 of the charge memo are one and the same. What applies to the third charge will apply to the fourth charge also. Of course, the learned standing counsel would draw my attention to the order dated 17.08.2022 made W.P.(MD)No.8604 of 2017 and anchored his objection on that basis. But there must be a reference to the said writ petition and the subject matter of said writ petition in the charge memo also. The said details cannot be introduced at the time of arguments. My attention is drawn to the decision reported **(2011) 14 SCC 379 (Anil Gilurker v. Bilaspur Raipur Kshetriya Gramin Bank)**. Paragraphs 12, 13 and 14 of the said judgment are as follows:-

“12. We also find that along with the charge-sheet dated 31.01.1989 no statement of imputations giving the particulars of the loan accounts or the names of the borrowers, the amounts of loans

sanctioned, disbursed and misappropriated were furnished to the appellant, and yet the disciplinary authority has called upon the appellant to submit his written defence statement in reply to the charges. We fail to appreciate how the appellant could have submitted his written statement in defence in respect of the charges and how a fair enquiry could be held unless he was furnished with the particulars of the loan accounts or the names of the borrowers, the amounts of loan sanctioned, the amounts actually disbursed and the amounts misappropriated were also furnished in the charge-sheet.

13. As has been held by this Court in *Surath Chandra Chakrabarty v. State of West Bengal* (supra):

"5.The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has also to be stated. This rule embodies a principle which is one of the basic contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him....."

14. This position of law has been reiterated in the recent case of *Union of India & Ors. v. Gyan Chand Chattar* (supra) and in Para 35 of the judgment as reported in the SCC, this Court has observed that the law can be summarized that an enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice and the charges should be specific,

definite and giving details of the incident which formed the basis of charges and no enquiry can be sustained on vague charges.”

7.The ratio is that if the charge is vague, it is a ground for quashing. Respectfully adopting the aforesaid ratio, I quash the third and fourth charges in the impugned charge memo. Charges 1 and 2 are not quashed and it is for the petitioner to prove his innocence in the domestic enquiry. All his contentions are left open. The petitioner of course will be given the fullest opportunity to establish his innocence.

7.The writ petition is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes/ No
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