

THE HON'BLE SMT JUSTICE P.MADHAVI DEVI

WRIT PETITION Nos. 17421 and 17422 of 2022

COMMON ORDER:

These two writ petitions are filed by the petitioners seeking Writs of Mandamus declaring that the Show Cause Notices of Removal from service issued by the 2nd respondent *vide* Proceedings No.01/114(1)/2021-BNS dated 28.03.2022 and 01.04.2022, which were received by both the petitioners on 01.04.2022, proposing to impose the punishment of removal from service even before expiry of stipulated time for submitting petitioners' comments on the enquiry report, as illegal, unjust, contrary to law, violative of principles of natural justice and in violative of Articles 14, 16 and 21 of the Constitution of India, and to set aside the same and grant all consequential benefits thereto.

2. The brief facts of the case leading to filing of these writ petitions are that the petitioner in W.P.No.17421 of 2022 is a driver and the petitioner in W.P.No.17422 of 2022 is a conductor working in TSRTC, both of whom were issued with charge sheet dated 25.10.2021 alleging that they have refused to upload certain cargo parcels at JBS Cargo and Parcels point on

29.07.2021. Thereafter, enquiry was initiated and petitioner in W.P.No.17421 of 2022 i.e., driver participated in the enquiry till 10.02.2022, whereas on 26.02.2022 the driver had to cross-examine the witnesses, but he did not attend the enquiry and it was the conductor i.e., petitioner in W.P.No.17422 of 2022, who attended the enquiry on that day, but he did not give any statement. Since, the driver did not attend the enquiry and the conductor did not give any statement, the enquiry officer recorded that they have nothing further to say. Thereafter, the enquiry officer submitted his enquiry report dated 14.03.2022 to the Disciplinary Authority and the Disciplinary Authority issued notice dated 17.03.2022 to both the petitioners seeking their objections/comments on the enquiry report within 7 days from the date of receipt of the said notice.

3. It is stated that the copy of above said notice dated 17.03.2022 was served on 21.03.2021 on the driver and on 25.03.2022 on the conductor. However, without waiting for the above mentioned 7 days, in the notices, the show cause notices dated 28.03.2022 and 01.04.2022 were issued to both the petitioners to show cause as to why they should not be removed

from service. Challenging the said show cause notices, the present writ petitions are filed.

4. Mr. A.K. Jaya Prakash Rao, the learned Counsel for petitioners in both the cases submits that in W.P.No.17421 of 2022 no notice was issued to the petitioner to attend enquiry on 26.02.2022 and therefore, he did not attend the enquiry. Further, in respect of show cause notice of removal from service, it is submitted that sufficient time was not given to the petitioners to submit their objections/comments on the enquiry report, and that though they requested for time, the same was not considered and without waiting for the said objections/comments from the petitioners, the show cause notices for removal from service were issued. Hence, the petitioners were not given sufficient opportunity and the said show cause notices were issued against the principles of natural justice.

5. Mr. A. Ravi Babu, the learned Standing Counsel for TSRTC submits that after initiating enquiry, the petitioner in W.P.No.17421 of 2022 did not attend the enquiry on 26.02.2022 and the petitioner in W.P.No.17422 of 2022 though attended the enquiry, did not give any statement and therefore, there is no violation of any principles of natural justice and they were given

sufficient opportunity. Further, the petitioners never submitted their objections/comments on the enquiry report and hence, the show cause notices for removal from service were issued against them.

6. He further placed reliance on the judgment of the Hon'ble Supreme Court of India passed in ***Union of India and another Vs. Kunisetty Satyanarayana*** in ***AIR 2007 SUPREME COURT 906***, for the proposition that a writ petition against Show Cause Notice should not be entertained by this Court under Article 226 of Indian Constitution. He further submits that the petitioners herein may be advised or directed to submit their respective explanations to the show cause notices issued to them and thereafter, the enquiry proceedings shall be proceeded in accordance with law.

7. Having regard to the rival contentions of the parties, this court finds that both the petitioners are alleged to have been involved in the same enquiry and the enquiry against both of them is also conducted simultaneously.

8. It appears, the last date of hearing before the enquiry officer was on 26.02.2022 and on the said date, petitioner in W.P.No.17421 of 2022 has not attended and though the petitioner

in W.P.No.17422 of 2022 attended, he did not give any statement. Subsequently, notices calling for objections/comments on the enquiry report are issued to the petitioners *vide* notice dated 17.03.2022, but they did not submit any objections/comments to the enquiry report.

9. It is evident that as alleged by the learned Counsel for petitioners, the respondents did not wait for the period of 7 days mentioned in the show cause notices for the petitioners to submit their objections/comments to the enquiry report, but issued the show cause notices for removal from service. Therefore, this is in clear violation of principles of natural justice.

10. The Hon'ble Supreme Court in the case of ***Union of India and another Vs. Kunisetty Satyanarayana*** in ***AIR 2007 SUPREME COURT 906***, clearly laid down that the reason why ordinarily a writ petition should not be entertained against show cause notice or charge sheet is that as it would be premature and it does not amount to any adverse order which affects the rights of any party, unless the same has been issued by a person having no jurisdiction to do so or if it is in violation of principles of natural justice and that in such cases, this Court can interfere under its jurisdiction under Article 226 of Constitution of India.

11. Since, in the present case, it has been established that the principles of natural justice have not been followed by the respondents, this court deems it fit and proper to set-aside the show cause notices issued by the 2nd respondent *vide* Proceedings No.01/114(1)/2021-BNS dated 28.03.2022 and 01.04.2022, which were received by both the petitioners on 01.04.2022.

12. Further, in view of the fact that the petitioners were not given an opportunity to cross-examine the witnesses, in order to follow the principles of natural justice, the respondents are directed to permit the petitioners to participate in the enquiry from the stage of cross-examination, at the stage where the proceedings were going on, on 26.02.2022 and thereafter, to conclude the disciplinary proceedings in accordance with law.

13. In view of the above, the respondents in both the writ petitions are directed to re-open the enquiry proceedings and conclude the same in accordance with law, after giving sufficient opportunity to the petitioners to cross-examine the witness in accordance with law and thereafter the disciplinary proceedings may be concluded.

14. With the above directions, these writ petitions are allowed.

15. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE P. MADHAVI DEVI

Date: 19.09.2022.
GVR/SSN

THE HON'BLE SMT JUSTICE P.MADHAVI DEVI

WRIT PETITION Nos.17421 and 17422 of 2022

19.09.2022
(GVR/SSN)