



W.P(MD).No.14214 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated :25.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.14214 of 2019

S.Sekar

...Petitioner

Vs.

The Management

Tamil Nadu State Transport Corporation,

Tirunelveli Region,

Central Office, K.T.C.Nagar,

Tirunelveli 627 001

...Respondent

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records of the proceedings in I.D.No.50 of 2014, on the file of the Labour Court , Tirunelveli dated 15.04.2016 and quash the same and consequently direct the respondent herein to reinstate the petitioner into service with back wages and all attendant benefits.



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For Petitioner : Mr.K.Hemakarthiskeyan
For Respondent : Mr.K.Sathiyasingh
Standing Counsel

ORDER

This writ petition has been filed challenging the impugned award passed in I.D.No.50 of 2014 dated 15.04.2016.

2. The petitioner herein was appointed as a Driver in the respondent corporation and has rendered 12 years of service until 2010. A complaint was lodged by one R.Renganathan, Assistant Engineer against the petitioner alleging that on 09.06.2010, the said Renganathan has given instructions to the drivers how to use the vehicles without ashes and at that time, the petitioner had attacked the said Renganathan on his right hand as well as left thigh and abused him with filthy language. Moreover, the petitioner has also attacked one Murugan and another namely Vijaya Anand, who are drivers, who had prevented the petitioner from further attacking the said Renganathan. For this alleged misconduct, a charge memo was issued by the respondent by invoking clauses 169(1), (2) and (40) of the Corporation's Standing Orders. The petitioner had



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submitted his explanation. Not being satisfied with the same, the respondent corporation had ordered for departmental enquiry and upon enquiry, all the charges levelled against the petitioner were held proved. Thereafter, based on the enquiry report and based on the past records of the petitioner, the petitioner was dismissed from service by order dated 11.02.2011.

3. For the above incident, FIR was also registered in Crime No.269 of 2010 and the same was taken on file in C.C.No.258 of 2010. The charges in the criminal case as well as the departmental proceedings were one and the same. After dismissing the petitioner from service, the respondent corporation had filed a petition before the Special Deputy Commissioner of Labour, Chennai in A.P.No.58 of 2011 for approval under Section 33(2)(b) of Industrial Disputes Act, 1947. The said approval was dismissed vide order dated 17.12.2012. However, the next day, the same Special Deputy Commissioner of Labour, Chennai passed an order i.e., 18.12.2012 that there was a typographical error on the earlier order and paragraph No.6 of the order has to be read as if the petition was allowed and the approval was granted.

4. In the meantime, the Assistant Commissioner, Nagercoil has sent his



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failure report to the Government vide report dated 26.07.2013. Based on the report, the Government has sent the same to the Labour Court, Tirunelveli for adjudication under Section 2(k) of the Industrial Disputes Act, 1947. Thereafter, the petition was numbered as I.D.No.50 of 2014. After considering all the materials available on record, the Labour Court has dismissed the petition filed under the Industrial Dispute Act. For the same set of facts, in the criminal case, the Learned Judicial Magistrate No-I, Nagercoil has acquitted the petitioner in C.C.No.258 of 2010 dated 18.02.2015. Even though, for the same set of facts, the criminal Court has acquitted the petitioner, the labour court confirmed the punishment. Aggrieved over the same, the present writ petition is filed.

5. The respondent has filed counter affidavit stating that on 09.06.2010 at about 04.45 a.m., the petitioner had attacked the Assistant Engineer with an iron rod and caused grievous injuries. Further at the time of attacking the said Renganathan, the petitioner had used filthy language. Due to the act of the petitioner, the Assistant Engineer sustained multiple injuries on his head, left shoulder and right hand. The other staffs tried to obstruct the petitioner and the petitioner threatened others and ran away from the spot. Immediately, the Assistant Engineer was admitted in Kanyakumar Government Hospital and



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thereafter he was shifted to Jeyasekaran Hospital Nagercoil and he was admitted at B.G.M.Hospital Madurai for further treatment. Thereafter, a criminal complaint was lodged. Pursuant to the above said act of the petitioner, the departmental proceeding was also initiated. Since it is the act of serious allegation, the punishment of dismissal from the service was imposed. There is no violation of principles of natural justice. Moreover, the approval was granted by the concerned authority. Therefore, the writ petition is not maintainable and seeks for dismissal of this case.

6. Heard Mr.K.Hemakarthykeyan, the Learned Counsel appearing for the writ petitioner employee and Mr.K.Sathiyasingh, the Learned Standing Counsel appearing for the State Transport Corporation employer and perused the materials available on record.

7. The first contention that was raised by the petitioner is that the petitioner was working as a driver and the said Renganathan was working as an Assistant Engineer. The enquiry was conducted by the person, who is below the rank of the petitioner. The contention of the respondent is that such a plea was not raised before the enquiry officer and it is for the first time the petitioner is



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raising before this Court and prayed to reject the said contention. But the Learned Counsel appearing for the petitioner submitted that such contention can be raised at any stated and in support of his contention, the Learned Counsel relied on the judgment of the Hon'ble Division Bench of the Kerala High Court rendered in **W.A.Nos.780 and 811 of 1993** in the case of **V.Abusali Vs. The Commandant and others**, wherein it is held as follows:

“4.We have heard learned counsel on both sides. In our view the learned single judge ought to have accepted the contention of the writ petitioner (appellant in W.A.No.811 of 1993) that the Enquiry Officer, being a Subordinate officer to the complainant, the entire proceedings relating to enquiry were vitiated. The only ground on which the learned single Judge rejected the case of the writ petitioner was that the writ petitioner ought to have raised an objection into the enquiry that the Inspector, who was conducting the enquiry, was a subordinate of the Asst. Commandant, the complainant. In the recent decision of the Supreme Court in Rattan Lal Sharma Vs. Managing Committee, Dr.Hari Ram (Co-education) Higher Secondary School and others, it has been pointed out by the Supreme Court that in cases of bias, all that the Court has to consider is whether there was a real likelihood of bias. The Supreme Court also pointed out that the question of real likelihood of



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bias should be judged not from the point of view of the Court, but from the point of view of the delinquent officer. The Supreme Court also specifically and expressly laid down that the fact that such an objection was not taken in the enquiry is not a ground for refusing to hold that the enquiry was vitiated. In Paragraph No. 12 of the above said decision, the Supreme Court pointed out that the Division Bench of the High Court was in error in not allowing the point to be taken by the petitioner in that case before it. Such a question of prejudice or bias would go to the root of the case and make the entire proceedings a nullity.”

The Hon’ble Courts have held that if the subordinate officer is appointed as enquiry officer there is possibility of bias. In the present case, the enquiry officer is below the rank of the petitioner, who was working as a clerk. Following the judgment of the Division Bench of the Kerala High Court and the judgment rendered by Hon’ble Supreme Court in Rattan Lal Sharma Vs. Managing Committee, Dr.Hari Ram (Co-education) Higher Secondary School and others, this Court is of the considered view that bias can be entertained at any stage. Therefore, the impugned order is liable to be interfered.



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8. The next contention of the petitioner is that even for the misbehaviour, the Standing Orders states that fine can be imposed for the said offence. Therefore, this Court is of the view that the respondent had not followed their own Standing orders while imposing punishment.

9. The next contention of the petitioner is that the petitioner was acquitted in the criminal case. When the petitioner was acquitted for the same set of facts, then the respondents ought to reconsider the punishment imposed on the petitioner in the disciplinary proceedings, for which the Learned Counsel appearing for the petitioner had relied on the judgment rendered in W.P.No. 28979 of 2010 dated 10.02.2022. In the said judgment the Learned Single Judge of this Court has held that, for the same set of charges, based on the same statements and evidences the Court below has acquitted the petitioner, then the delinquent is entitled to be reconsider the punishment. In the present case, subsequent to the disciplinary proceedings, the Criminal Court had acquitted the petitioner.

10. At this stage the Learned Counsel appearing for the respondent submitted that the case ought to be remitted to the authority for re-consideration.



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Since this Court already has held that the enquiry proceeding is based on bias, the punishment imposed on the petitioner ought to be quashed. At the same breath the petitioner cannot be left without any punishment for the charges which are quite serious.

11. It is seen that the petitioner has joined the service on 11.10.1999 and dismissed on 09.06.2010. The petitioner has seven more years for superannuation. By taking all these facts and circumstances of the case and to meet the ends of justice this Court is inclined to pass the following order:

(i) The impugned order of dismissal from service is set aside on the basis of bias.

(ii) The petitioner shall be reinstated into service with a period of four weeks from the date of receipt of the copy of the order.

(iii) The petitioner is not entitled to any back wages for the period he is out of service i.e. from 10.06.2010 till the date of this order i.e. 25.04.2023. But the petitioner is entitled to continuity of service.

(iv) As far as the punishment is concerned, the



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respondents are directed to consider for imposing lesser punishment like the stoppage of increment with cumulative effect.

With these directions this Writ Petition stands allowed. There shall be no order as to costs.

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NCC : Yes/No

Index : Yes/No

Internet: Yes/No

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S.SRIMATHY, J.

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