



WEB COPY



W.A.No.3395 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2024

CORAM

**THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN**

Writ Appeal No.3395 of 2024

A.M.Mariyappan ... Appellant

Vs.

1.The Principal Secretary / Chairman
Transport Department, Secretariat
Fort St.George, Chepauk,
Chennai 600 009.

2.The Managing Director
O/o The Managing Director
Metropolitan Transport Corporation
Pallavan Salai, Chennai 600 002.

3.The Managing Director
O/o The Managing Director
Tamil Nadu State Transport Corporation
Coimbatore.

4.The Senior Deputy Manager (HRD)
O/o.The Senior Deputy Manager
Pallavan Salai, Chennai 600 002.

.... Respondents

Writ Appeal under Clause 15 of the Letters Patent against the order dated
07.06.2024 in W.P.No.14821 of 2024.



W.A.No.3395 of 2024

For Appellant : Mr.L.Muralikumaran, Senior Counsel
Assisted by Mr.R.Gopinath
for Mr.R.Gopinath for M/s.McGan Law Firm

For Respondents : Mr.M.Alagu Goutham
Government Advocate - for R1

Mr.C.Gauthamraj, Standing Counsel -for R3

J U D G M E N T

(Delivered by **R. SURESH KUMAR, J.**)

This intra Court appeal has been filed against the order of the Writ Court dated 07.06.2024 in W.P.No.14821 of 2024.

2. The appellant was working as General Manager in the respondent Transport Corporation. For the alleged delinquency in the year 2014-15, there has been a DVAC enquiry in Crime No.441 of 2015 on the file of the Assistant Commissioner, Central Crime Branch, Chennai for the alleged offences under Sections 120-B read with 420 IPC and Sections 7, 12, 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988.

3. It was a criminal case against a group of people, where the appellant / delinquent was one of the members in the Selection Committee for selecting staff for the respondent Transport Corporation during the relevant point of time. Based on the complaint, the DVAC had registered a case and investigated the matter.



W.A.No.3395 of 2024

WEB COPY

4. When this was brought to the notice of the employer, the employer, by invoking Rule 18 of the Tamil Nadu Transport Corporation Employees (Discipline and Appeal) Rules (In short 'the Rules') has placed the writ petitioner / appellant under suspension by order dated 21.05.2024. This order was under challenge before the writ Court.

5. In fact, the appellant / delinquent was to superannuate on 31.05.2024. Ten days prior to the superannuation, such a suspension order has been issued. He has not been permitted to retire and he is being paid subsistence allowance. Therefore, in order to challenge the said order of suspension dated 21.05.2024, writ petition in W.P.No.14821 of 2024 was filed.

6. Considering the said plea raised by the writ petitioner / appellant, the learned Writ Court came to the conclusion that there is no other course of action for the employer except to place him under suspension. Therefore, the challenge made against the suspension order is to be negated and therefore he negated the said prayer and it was directed that the employer shall calculate the subsistence allowance payable to the employee and keep paying the same as long as the petitioner remains under suspension.



W.A.No.3395 of 2024

7. We have heard L.Muralikumaran, Senior Counsel for the appellant, Mr.M.Alagu Goutham, learned Government Advocate for the first respondent and Mr.C.Gauthamraj, Standing Counsel for the third respondent.

8. It is stated by the learned counsel for the respondent Corporation that based on the criminal case which was pending before the concerned Court, the disciplinary authority has issued a charge memo dated 03.04.2024, and by superseding the same issued a subsequent charge memo dated 08.05.2024. In view of the charge memo having been issued, the suspension order which was impugned before the writ Court cannot be interfered with, as he must be under suspension in view of Rule 18 having been invoked in this case, he contended.

9. We have gone through the materials placed before us. In the charge memo dated 08.05.2024, it has been merely stated that there has been a criminal charge framed against the appellant and others and it is pending before the criminal Court. Hence, he was issued with a show cause notice as he has violated Rule 28(p) and 28(r) of the Service Rules. However, the said charge memo cannot be proceeded further for the simple reason that no independent charge has been framed against the delinquent under the service law of the employer and only a statement of fact has been made as if that a criminal charge has been made out before the concerned Court and it is pending for trial. This



charge cannot be even denied by the delinquent, as it is a fact that there has been a charge laid against him.

10. Therefore, unless the criminal case is completed, the disciplinary authority seems to have not been in a position to move further. We have also gone through the list of witnesses filed by the prosecution before the criminal Court, where it has been shown a list of 150 witnesses on behalf of the prosecution. The trial is yet to be commenced. In fact according to the learned counsel for the appellant, even the charges have not been framed within the meaning of the Criminal Procedure Code.

11. When that being the position, it may take a very reasonable time to complete the trial and till such time, if the appellant is kept under suspension, unnecessarily huge amount by way of subsistence allowance has to be drawn and paid to him. Therefore, in these circumstances we feel that the necessity to keep him under suspension any more can very well be reviewed and this is the policy of the model employer ie., the State Government as they have issued G.O.Ms.No.81, Human Resources Management (N) Department dated 04.08.2022, under which time frame has already been provided, as to how the disciplinary proceedings has to be conducted against an employee.



W.A.No.3395 of 2024

12. Taking into consideration the overall facts and circumstances, we are inclined to dispose of this writ appeal with the following direction.

"That there shall be a direction to the respondent Corporation to review the order made against the appellant dated 21.05.2024 in the circumstances which we have discussed herein above and accordingly pass a reasoned order within a period of 30 (thirty) days from the date of receipt of a copy of this order."

13. With the above direction and modification of the order passed by the learned writ Court, which is impugned herein, this writ appeal is disposed of. No costs.

(R.S.K.,J.) (C.S.N.,J.)
02.12.2024

NCS : Yes/No
Index : Yes/No
KST



W.A.No.3395 of 2024

To

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