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W.A.No.3552 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2024

CORAM

THE HON'BLE Mr. JUSTICE R.SURESH KUMAR
AND
THE HON'BLE Mr. JUSTICE K.KUMARESH BABU

W.A.No.3552 of 2019

E.Ravi

... Appellant

Vs.

1.The Managing Director,
Metro Transport Corporation,
Pallavan Illam,
Anna Salai,
Chennai – 600 002.

2.The General Manager (Administration),
Metro Transport Corporation (Chennai) Ltd.,
Anna Salai,
Chennai – 600 002.

... Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent Act, praying
to set aside the order dated 05.07.2019 in W.P.No.28937 of 2012.

For Appellant : Mr.S.Doraiswamy

For Respondents : Mr.C.Gowthamaraj



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JUDGMENT

WEB COPY (Judgment of the Court was delivered by R.SURESH KUMAR, J.)

This writ appeal has been directed against the order passed by the Writ Court dated 05.07.2019 made in W.P.No.28937 of 2012.

2. That the appellant/petitioner joined as Driver in the 2nd respondent Transport Corporation in January, 2008. While he was working in the 2nd respondent Transport Corporation, the bus driven by him involved in an accident on 17.02.2008. The pedestrian who was hit by the bus, died after six days despite the treatment.

3. Therefore, a charge memo was issued to the petitioner/appellant and not being satisfied with the explanation given by the petitioner/appellant, a domestic enquiry was conducted and the Enquiry Officer since had given a report that the charges framed against him has been proved, based on the same the 2nd respondent discharged the petitioner/appellant from service on 28.03.2009, as against which, when appeal was filed that was also dismissed by the Appellate Authority, therefore he had chosen to file the said writ petition.



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4. The learned Judge who heard the writ petition ultimately dismissed the said writ petition by order dated 05.07.2019 which is impugned herein.

5. Assailing the order, Mr.S.Doraiswamy, learned counsel appearing for the appellant would contend that, insofar as the domestic enquiry conducted by the Enquiry Officer is concerned, it has not been conducted in tune with the principles of natural justice, therefore the domestic enquiry itself is vitiated.

6. After the domestic enquiry was over, based on which when a second show cause notice had been given, that had been replied by the appellant on 12.02.2009 in Proceedings/Letter No.703/KND 2/MTC.

7. However, while passing the order of discharge, the Disciplinary Authority had specifically stated that, despite the second show cause notice had been given and such an opportunity was given to the employee/ appellant, he had not chosen to give his reply.



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8. However, the fact remains that such a reply had been given and this has been once again reiterated and brought to the notice of the Managing Director of the Transport Corporation by subsequent letter dated 16.05.2009, despite this efforts having been taken by the appellant, the respondent had not come forward to review their order as without considering the reply that has been given by the employee/writ appellant since order of discharge had been passed, which has been confirmed mechanically by the Appellate Authority, both orders are infirm and therefore they are liable to be interfered with. However, this aspect since has not been considered in proper perspective by the learned Judge who disposed the writ petition, the order impugned is liable to be interfered with, he contended.

9. In respect to the said arguments, Mr.C.Gowthamaraj, learned counsel appearing for the respondent Transport Corporation had submitted that, the domestic enquiry was conducted properly and the appellant since met with an accident within one month period from the date he joined his service and that was a fatal accident and based on which, the charge framed against him since has been proved during the



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domestic enquiry as per the report of the Enquiry Officer having accepted the same, when a second show cause notice was given, no reply since had been given by the employer/writ appellant, the Disciplinary Authority had come to the conclusion that, the maximum punishment of discharge from service can be inflicted on him, accordingly such punishment has been imposed which has been confirmed by the Appellate Authority.

10. We have heard the learned counsel appearing for both sides.

11. Since there has been a controversy with regard to whether the writ petitioner/appellant had given reply to the second show cause notice as claimed by him in his letter dated 16.05.2009 as the same has been denied orally by the learned counsel appearing for the respondent Transport Corporation on the basis of instructions given by them, we wanted the original records to be produced before this Court. Though time had been given to the respondent/Transport Corporation to produce the records, today when the case is taken up for hearing, the learned Standing Counsel appearing for the respondent by relying upon a communication dated 18.01.2024 of the Senior Deputy Manager



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addressed to the Assistant Commissioner regarding the Court Matters had informed that, the petitioner/appellant was removed from service on 28.03.2009. Since the file was more than 14 years, we could not find out the same and it was sent for disposal and we have final order xerox copy only. Along with the said communication, photocopy of some more communications or documents have been annexed, which shows that the records have been destroyed.

12. Therefore, as of now there has been no records available to verify the factum, that has been projected by the appellant side that reply to the second show cause notice had been given on 12.02.2009 through the Branch Manager dated 31.01.2009, whether it is correct or not cannot be ascertained.

13. When that being the position, the statement given by the petitioner as it has been specifically made in the letter dated 16.05.2009 where the date of the reply and the date of which it has been given to the Branch Manager with reference number has been given, therefore the said statement given by the petitioner/appellant has to be accepted.



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14. If that being so, since there has been a reply to the second show cause notice, the same ought to have been considered by the Disciplinary Authority and in the order of inflicting the punishment against the writ appellant, since the Disciplinary Authority has stated that, the second show cause notice had not been replied at all by the petitioner/writ appellant, the said statement cannot be accepted. Therefore, on that ground we feel that the order impugned before the Writ Court i.e. removal of service of the petitioner/appellant is vitiated. Resultantly, the order impugned passed by the learned Judge who has not considered this aspect in proper perspective is liable to be interfered with. With the result, the following orders are passed in this appeal.

That the impugned order of the Writ Court is set aside.

As a sequel, that the order of removal of service passed by the respondent/employer dated 23.08.2011 also is set aside and the matter therefore is remitted back to the respondents for reconsideration. While reconsidering the same, if the reply to the second show cause notice given by the petitioner/appellant in the year 2011 since has already been lost, such records are not available, one more copy of the said reply can be obtained from the petitioner/appellant by



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the respondent/employer and based on which, the same shall be considered afresh and a decision on merits thereon be made within a period of two months from the date of receipt of a copy of this judgment.

15. With these directions, this Writ Appeal is ordered accordingly.

However, there shall be no order as to costs.

[R.S.K., J.] [K.B., J.]
31.01.2024

Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

Sgl



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To

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