



W.P.(MD).No.5002 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 05.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.5002 of 2024

and

W.M.P.(MD) No.4783 of 2024

P.Murugan

... Petitioner

Vs.

1. The Tamil Nadu State Transport
Corporation (Tirunelveli) Limited,
Represented by its Managing Director,
Tirunelveli.

2. The General Manager,
Tamil Nadu State Transport
Corporation (Tirunelveli) Limited,
Tirunelveli Region,
Tirunelveli District.

3. The Branch Manager,
Tamil Nadu State Transport
Corporation (Tirunelveli) Limited,
Kattabomman Nagar Branch,
Tirunelveli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India,
praying this Court to issue a Writ of Certiorarified Mandamus, calling for the



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records pertaining to the impugned charge Memo issued by the second respondent dated 26.12.2023 in reference No.10430/Sa-08/Olungu/ TNSTC/ 2023 and consequential impugned show cause notice issued by the second respondent dated 25.01.2024 in Reference No. T10430/Sa-08/ O.Na.Pi/ TNSTC/Thili/2023, quash the same and consequently directing the respondents to continue to employ the petitioner as Senior Driver in the first respondent Corporation with all attendant benefits and backwages payable from the date of the petitioner's disengagement i.e., from 28.11.2023 to till the date of providing the petitioner duty.

For Petitioner : Mr.A.Rahul

For Respondents : Mr.D.Jebaraj
Standing Counsel

ORDER

The instant writ petition has been filed by a Senior Driver working in the respondent Transport Corporation, challenging the charge Memo dated 26.12.2023 and the consequential show cause notice issued on 25.01.2024 proposing to impose punishment of dismissal from service.

2. The petitioner herein was convicted by the criminal Court under Section 138 of Negotiable Instruments Act, in S.T.C.No.272 of 2021, on the



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file of the Special Court for Exclusive Trial of Negotiable Instruments Act, Tirunelveli, on 07.10.2022. The petitioner was sentenced to undergo simple imprisonment for a period of 6 months and he shall have to pay the total compensation of Rs.1,50,000/-, (Rupees One Lakh and Fifty Thousand only) payable to the complainant within a period of two months from the date of the judgment, failing which, the accused shall have to undergo further period of two months simple imprisonment. The petitioner has undergone sentence of eight months.

3. After undergoing the sentence, when the petitioner has approached the respondent Transport Corporation for being reinstated, he was not permitted to rejoin on 28.11.2023. The petitioner was issued with the impugned charge memo on 04.05.2023 for his unauthorised absence. The petitioner has submitted an explanation and so far, no orders have been passed.

4. The petitioner was issued with a second charge memo on 26.12.2023 imputing that the petitioner having undergone sentence of 8 months and therefore, he has violated the Standing Orders of the Transport Corporation.



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Though the petitioner has given an explanation, the said explanation was not accepted and straight away, the impugned second show cause notice was issued on 25.01.2024 indicating that the Management has proposed to remove the petitioner from service. The charge memo dated 26.12.2023 and the second show cause notice dated 25.01.2024 are under challenge in the present writ petition.

5. According to the learned counsel appearing for the petitioner, as per the Standing Orders of the respondent Transport Corporation, unless the petitioner was convicted by a Court of law, for any criminal offence involving moral turpitude, he cannot be dismissed from service. In the present case, he has been convicted for the offence under Section 138 of Negotiable Instruments Act.

6. The learned Counsel appearing for the petitioner had relied upon the judgment of the Hon'ble Supreme Court in **(2011) 4 Supreme Court Cases 593 (Kaushalya Devi Massand Vs- Roopkishore Khore)**, the judgment of the Kerala High Court in **WP(C) No.16011 of 2013, dated 03.03.2015** and the judgment of the Hon'ble Division Bench of our High Court reported in



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2016-2-L.W.147 (L.Manjula Vs. The State of Tamil Nadu, Represented by the Secretary to Government, Home (Courts) Department, Fort St. George, Chennai -09 and others) in support of his contentions.

7. Per contra, the learned Standing Counsel appearing for the respondents herein had contended that the petitioner has been convicted by the criminal Court and he was absent for duty/unauthorised leave during the sentence period and therefore, the present charge memo has been issued and prayed for sustaining the charge memo.

8. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

9. The petitioner has been issued with a charge memo by the respondent Management on 04.05.2023 for the unauthorised absence. This Charge Memo has not been challenged by the writ petitioner.

10. The charge memo that has been challenged in the present writ petition is only for his conviction under Section 138 of Negotiable



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Instruments Act and the second show cause notice proposing to remove him from service.

11. In the judgment of the Hon'ble Supreme Court reported in **(2011) 4 Supreme Court Cases 593 (Kaushalya Devi Massand Vs- Roopkishore Khore)**, while considering the nature of offence under Section 138 of Negotiable Instruments Act, in paragraph No.11, it is held as follows:

“11. Having considered the submissions made on behalf of the parties, we are of the view that the gravity of a complaint under the Negotiable Instruments Act cannot be equated with an offence under the provisions of the Penal Code, 1860 or other criminal offences. An offence under Section 138 of the Negotiable Instruments Act, 1881, is almost in the nature of a civil wrong which has been given criminal overtones.

12. In the judgment of the learned Single Judge of Kerala High Court order in **WP(C) No.16011 of 2013, dated 03.03.2015** in Paragraph No.10 it is held as follows:

“10. I am of the view, such finding is



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unsustainable, unless, it is found that the petitioner's conviction as a result of the prosecution against him for any offence of moral turpitude. The retention in public service, necessarily, presuppose that public servant's personal credibility among general public is not lowered due to involvement in any offence of moral turpitude. It refers to thought, action and mind of the public servant to result in lower the image. The disciplinary proceedings without adverting to the findings of the criminal court to hold that retention of the petitioner in the public service is undesirable, is therefore, illegal”.

13. In the judgment of the Hon'ble Division Bench of our High Court reported in **2016-2-L.W.147 (L.Manjula Vs. The State of Tamil Nadu, Represented by the Secretary to Government, Home (Courts) Department, Fort St. George, Chennai and others)**, in Paragraph No.10 it is held as follows:

“10. A reading of Section 138 of the Negotiable Instruments Act makes it clear that it is a deeming provision and the offence committed being commercial in practice cannot be taken as one involving moral turpitude. In other words, the conviction for an offence



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under Section 138 of Negotiable Instruments Act cannot be termed as a punishment for an offence involving moral turpitude.”

14. Therefore, in view of the judgment of the Hon'ble Supreme Court and the Judgment of the Hon'ble Division Bench of our High Court, it is clear that the offence committed being commercial in practice cannot be taken as one involving moral turpitude. The conviction for an offence under Section 138 of Negotiable Instruments Act cannot be termed as a punishment for an offence involving moral turpitude.

15. The Standing Orders of the respondent Transport Corporation clearly point out that, unless an employee is convicted for any offence involving moral turpitude, he cannot be removed from service.

16. In view of the above said deliberations, the impugned charge memo and the show cause notice dated 25.01.2024 are hereby set aside. This Writ Petition stands allowed with a direction to reinstate the writ petitioner in service with all attendant benefits. However, they are at liberty to proceed



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with the departmental proceedings arising out of the charge Memo dated 04.05.2023. There shall be no order as to costs. Consequently connected Miscellaneous Petition stands closed.

05.09.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Managing Director,
Tamil Nadu State Transport
Corporation (Tirunelveli) Limited,
Tirunelveli.
2. The General Manager,
Tamil Nadu State Transport
Corporation (Tirunelveli) Limited,
Tirunelveli Region, Tirunelveli District.
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