
(2000) 04 MAD CK 0071

In the Madras High Court

Case No : Writ Petition No. 15016 of 1992

Ramachandran M.

APPELLANT

Vs

Cheran Transport Corporation Ltd. and Another

RESPONDENT

Date of Decision : 27-04-2000

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 120B, 408, 409, 413

Citation : (2001) 3 LLJ 1015

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V. Kanagaraj, J.—The Petitioner has filed this writ petition praying to issue a writ of certiorari calling for the records of the Board of Directors of Cheran Transport Corporation made in its proceedings No. 6177/MD/Law/CTC/88 dated August 10, 1992 confirming the order of Managing Director, the second respondent herein, made in his proceeding No. 6177/Law/CTC/88 dated March 30, 1990 and quash the order of the first respondent and pass such further or other orders.

2. In the affidavit filed in support of the writ petition, the petitioner would submit that he was originally employed at Anamalai Bus Transport, Pollachi for about 20 years and thereafter he worked as the Deputy Manager in the Cheran Transport Corporation, Coimbatore for more than 16 years rendering unblemished service, that while so, based on a charge sheet the Managing Director, Cheran Transport Corporation issued a show cause notice dated March 28, 1989 stating that he had indulged in malpractices joining hands with one P. Gothandapani, Assistant working under him relating to the delivery of condemned buses. The notice would specify that in between October 1986 and August 1988, out of 350 condemned buses sold through auction, 55 were fraudulently delivered without receiving full/part payment to the successful bidders or their representatives and hence became responsible for wrongful loss to the Corporation to the extent of Rs. 26 lakhs and odd.

3. The petitioner would further submit that he submitted his explanation to the said show cause notice on May 13, 1989. But however without being satisfied, enquiry was ordered on the charges appointing one S. B. Hanumantha Rao, retired Subordinate Judge as an enquiry officer who conducted the enquiry and submitted his report on March 12, 1990; that the enquiry officer though decided over the allegations made against the petitioner to be incorrect and unjustified and that the petitioner had no opportunity nor occasion to know about the fraud committed by the said Gothandapani and further has arrived at the conclusion that there was no basis nor evidence for the said charge. But however exceeding his jurisdiction, he had held that the petitioner was irresponsible, careless and negligent in his duties and responsibilities. The petitioner alleging that there was no allegation of such nature nor any enquiry held in this regard would further submit that such conclusion had been arrived at by the enquiry officer based on suppositions and surmises and not on material facts and strong circumstances and hence the conclusions arrived at by the enquiry officer ultimately holding the petitioner responsible for gross negligence of duty is with an ulterior motive and acting in collusion with the said Gothandapani and the same have not been proved on evidence.

4. The further submission of the petitioner is that the Managing Director who is the appointing authority is also the punishing authority and the competent authority and disciplinary authority conferred with powers of imposing penalty. But the second respondent Managing Director who is expected to consider the result of the enquiry, placed the subject before the Board of Directors in its meeting held on March 20, 1990 and the said Board had provisionally proposed to dismiss the petitioner from service with effect from May 23, 1989 and based on such authorisation, the Managing Director had issued a second show cause notice as contemplated under rule and in this respect, it should be mentioned that the Managing Director had abdicated his power and duty thereby depriving the petitioner an effective remedy of appeal also and hence the Managing Director had not applied his mind independently to the enquiry report so as to arrive at his own decision. But on the other hand, the Managing Director has mechanically acted and decided as per the dictates of the Board on March 20, 1990; that even the explanation submitted by the petitioner to the Managing Director for the second show cause notice, it had again been placed before the Board in its meeting held on March 20, 1990, and considered; that the enquiry officer had categorically decided that he was not found guilty of the offence charged either with dishonest intention or in connivance with the said Gothandapani to defraud the Corporation. However it held that in spite of there being no charge for negligence in duty and in the absence of any evidence available to that effect, the Board had erroneously concluded to dismiss the petitioner from service and the same is unsustainable in law.

5. The petitioner would further submit that against the order of the disciplinary authority, he preferred an appeal to the appointment committee/staff selection committee or Directors which ultimately dismissed the appeal on ground that the

petitioner had not put forth any substantial material for consideration as per the order communicated by the Managing Director in his proceeding No. 6177/MD/Law/CTC/88 dated August 10, 1992. Aggrieved against the said order of the Board, left with no other appeal or revision or alternative remedy, the petitioner would submit that he would come forward to file the above writ petition on certain grounds as alleged in the grounds of the writ petition.

6. In the counter affidavit filed on behalf of the respondent, they would not only generally deny the averments of the writ petition, but also specifically state that the petitioner while working as Deputy Manager (Traffic) in the respondent Corporation at the Head office at Coimbatore during the period from October 1986 to August, 1988, from out of 350 condemned buses sold through tender/auction, 55 buses were fraudulently delivered without receiving full or part payment of the value to the successful bidders on the basis of the intimation letters; that it was one Gothandapani, Assistant in the Traffic department in whose letters (Delivery Orders) he had made certain fraudulent entries which had been signed by the petitioner based on which the buses had been delivered.

7. Referring to the modus operandi of the petitioner and the other Assistant in the case of sale of condemned buses, the said Assistant, Gothandapani preparing the intimation letter (delivery orders) and the same coming to be approved and signed by the Deputy Manager (Traffic) wherein several fraudulent entries had been effected for the delivery orders by the said Gothandapani quoting irrelevant, false cash bills or cash receipts or pay order numbers with the view to show that the amount had been paid in respect of the vehicles whose numbers were found in the delivery orders, whereas actually in most of the cases the amount had neither been paid in full nor in part and in certain cases Registration Numbers of one or more buses were interpolated in the original delivery orders resulting in great loss to the Corporation. That on coming to know all these fraudulent acts, the Corporation authorities launched a criminal complaint with the Police on November 9, 1988 who registered the criminal case under Sections 109, 120B, 408, 409, 413, 420, 468 and 471 of IPC against the said Gothandapani and also against the petitioner and investigated into.

8. The further averments of the Counter affidavit are that the petitioner was charged along with the said Gothandapani who had committed the misconduct and he was directed to submit his explanation besides placing him under suspension, by letter dated September 22, 1989 that the petitioner denied all the charges in his explanation dated May 13, 1989 that not being satisfied with the explanation, the Management held a domestic enquiry into those charges; that in the domestic enquiry three witnesses were examined on the part of the Management and as many as 147 documents were marked and that on the part of the petitioner, he did not choose to examine anyone nor did he mark any document and he only submitted his explanation; that the enquiry officer found him guilty of the charge and the matter having been placed before the Board, it found the petitioner guilty of gross negligence in duty under Rule 28(i) of the

Conduct Rules of the Corporation; that holding him guilty of negligence and responsible for delivery of three condemned vehicles, the Board provisionally concluded to dismiss the petitioner; that the Board also resolved to authorise the Managing Director to issue a second show cause notice conveying the proposed punishment of dismissal in accordance with Rules 6(15) of the disciplinary and appeal service rules of the Corporation. The second show cause notice dated March 20, 1990 was issued for which the petitioner replied that he had been denied certain vital documents and no full opportunity was given and the entire enquiry proceeding initiated against him is misconceived; that the Management ultimately dismissed him from service on March 30, 1990; that an appeal was preferred by the petitioner and the same was dismissed on the ground that the punishment awarded to him was appropriate and that the appeal does not merit reconsideration. Assigning such reasons and on such averments, the respondents pray for dismissing the writ petition, with costs.

9. Assessing the merit of the case based on the pleadings by parties and having regard to the materials placed on record and upon hearing the learned counsel for both, what comes to be known is that on specific irregularities alleged to have been committed by the petitioner, having indulged in certain malpractices joining hands with one P. Gothandapani, an Assistant working under him relating to the delivery of condemned buses, the second respondent issued a show-cause notice dated March 28, 1989 calling for the explanation of the petitioner to the charges mentioned therein and in spite of the petitioner having submitted his explanations on May 13, 1989, not being satisfied, the second respondent ordered for an enquiry on the said charges appointing a retired Subordinate Judge as the Enquiry Officer, who conducted the enquiry and submitted his report on March 12, 1990 holding the petitioner guilty of negligence and carelessness in his duties and responsibilities and based on that enquiry report, the disciplinary authority, the second respondent herein, issued a second show-cause notice and ultimately inflicted the penalty of dismissal from service and the appeal preferred against the order of dismissal passed by the disciplinary authority to the Appointment Committee/Staff Selection Committee of Directors also having come to be dismissed on August 10, 1992, alleging that he is left with no alternate remedy, the petitioner has come forward to file the above writ petition seeking the relief, extracted supra.

10. On the part of the respondents, emphasis would be laid that during the period between October 1986 and August, 1988, from out of 350 condemned buses sold through tender/auction, 55 buses were fraudulently delivered without receiving full/part payments of the value to the successful bidders on the basis of the intimation letters; that the petitioner acting in connivance with one Gothandapani, an Assistant in the Traffic Department, signed the fraudulent entries made by the said Gothandapani based on which the buses had been delivered and in most of the cases, the amount had neither been paid in full nor in part resulting in great loss to the Corporation; that on coming to know of these fraudulent acts perpetrated on the part of the petitioners in connivance of

the said Gothandapani, the Corporation authorities not only launched a criminal prosecution with the police by way of a complaint on November 9, 1998, who registered a criminal case under Sections 109, 120-B, 408, 409, 413, 420, 468 and 471 of the I.P.C. against the petitioner and the said Gothandapani and was investigated into, but also issued the show cause notice directing the petitioner to explain his conduct regarding the specific allegations as per the show-cause notice dated March 28, 1989 thus initiating a disciplinary proceeding against the petitioner simultaneously that not being satisfied with the explanations offered on the part of the petitioner, a domestic enquiry into specific charges was conducted in which three witnesses were examined on the part of the Management and as many as 147 documents were marked. But, on the part of the petitioner, he did not choose to examine any witness nor did he choose to mark any document but only submitted his bare explanation and the Enquiry Officer ultimately found him guilty of gross negligence in duty under Rule 28(i) of the Conduct Rules of the Corporation based on which the Board provisionally concluded to dismiss the petitioner further authorising the Managing Director to issue a second show-cause notice to follow the other procedures and hence the Management respondent with further opportunity for the petitioner to explain, ultimately dismissed the petitioner from service on March 3, 1990; that the appeal preferred by him also got dismissed upholding the verdict of the disciplinary authority and since all the procedures established by law have been thoroughly followed in the domestic enquiry conducted and the conclusions arrived at by the disciplinary authority with due opportunity for the petitioner to be heard in full, there is no room for this court to interface with and on such arguments, the respondents would pray for dismissing the above writ petition with costs.

11. It is relevant to consider as to what are the specific charges which form the basis of the domestic enquiry as per the charge memo issued to the petitioner. They are:

"You, Thiru M. Ramachandran were working as Deputy Manager (Traffic) from March 19, 1986. One Thiru P. Gothandapani, Assistant was also working in the Traffic Department under your control. It has been brought to light that during your tenure as Deputy Manager (Traffic), certain malpractices had been done by you along with Thiru P. Gothandapani, Assistant in connection with the delivery of condemned buses. The details are as follows:

(i) During the period between October 1986 and August 1988, about 350 condemned buses were sold through tender/auction. Out of these sold buses, 55 buses were fraudulently delivered, without receiving full/part payment, to the successful bidders/their representatives on the basis of the intimation letters (delivery orders) signed by you or signed on your behalf. The details of the malpractices done by you in connection with the fraudulent delivery of condemned sold buses are elucidated in the annexure.

(ii) While perusing the intimation letters (Delivery orders) addressed to Assistant

Manager, FC Unit, Ondipudur/Divisional Manager, Pollachi in connection with the delivery of condemned buses, it was found that 36 intimation letters (delivery orders) have been signed by you and three have been signed by the then Assistant Manager, Personnel Department-II on your behalf. Further, the cash bill Nos. mentioned in the intimation letters (delivery orders) do not relate to the vehicle or vehicles mentioned in the letters (orders) but actually related to some other transactions, or did not relate to full value of the vehicle/vehicles mentioned in the intimation letters (delivery orders), or were false. In certain cases, the registration numbers of one or more buses were interpolated in the original intimation letters (delivery orders). You had also attested the signatures of the representatives of the successful bidders without receiving valid authorisation letters.

iv) In the list of condemned buses sold during the years furnished by you to the Accounts Department for the years 1986-87 and 1987-88, five vehicles (MDN 3805, MDN 8004, TMN 3260, TMN 3599 and TMN 3966) and nine vehicles (TMN 3350, TMN 3674, TMN 3433, TMN 3880, TMN 3946, TMN 3964, TMN 3972, TMN 3853 and TMN 3947) respectively, have been deliberately left out.

Thus you along with Thiru P. Gothandapani, Assistant who was attending to all the relevant works relating to disposal of condemned buses including delivery of sold vehicles, had caused fraudulent delivery of 55 sold buses and hence are responsible for the wrongful loss caused to the Corporation to an extent of Rs. 28,20,094.28.

12. There is no dispute that the above charges have been held not proved by the Enquiry Officer. But, at the same time, it came to be known that the Enquiry Officer himself has held that the petitioner was irresponsible careless and negligent in his duties and responsibilities and on these scores would hold him guilty. The disciplinary authority, the second respondent herein, placing the enquiry result before the Appointment Committee/Staff Selection Committee for due consideration in the meeting and on their approval, affording further opportunity for the petitioner to submit his explanation on a second show-cause notice as to why the penalty of dismissal from service should not be inflicted and on not being satisfied with the explanation offered on the part of the petitioner had ultimately dismissed the petitioner from service.

13. Now, the short question that falls for consideration to decide the above writ petition is, whether the disciplinary authority is competent to or within his jurisdiction to inflict such punishment and in the manner that he has done?

14. There is no dispute that the enquiry was held and the specific charges, extracted above, for which alone the petitioner was asked to explain under the show-cause notice and thereafter was given chance to defend himself and on the enquiry held on such specific charges, the petitioner was found not guilty by the very Enquiry Officer appointed by the Management. But, overstepping his jurisdiction, the Enquiry Officer has found the petitioner irresponsible, careless

and negligent in his duties and responsibilities regarding which there was neither a charge nor on such specific allegations had the petitioner been given any opportunity to be heard nor had the scope of enquiry been at any point of time or under any circumstance expanded to that extent and the Enquiry Officer given the authority to go into such questions. Hence, the Enquiry Officer's findings on matters beyond the scope of the enquiry proceeding should only to be held bereft of any authority or jurisdiction. Based on such erroneous conclusions arrived at by the Enquiry Officer, much less without any opportunity for the petitioner to defend himself on such allegations which came into existence only in the Enquiry Report and never before, the decision taken by the disciplinary authority to accept the said finding and to inflict the penalty of dismissal from service on the petitioner is illegal and void and without any authority of law and quite repugnant to the high principles of natural justice. Further more, the procedure adopted by the second respondent after the submission of the Enquiry Report before him, in so far placing the same before the Appointment Committee/ Staff Selection Committee or Directors for consideration and approval and on the preliminary finding arrived at by the said Committee, following the same to inflict the penalty of dismissal from service on the petitioner is undesirable since it would only show non-application of mind on the part of the disciplinary authority independent of alien influence and on this score also, the order passed by the disciplinary authority, the second respondent, inflicting the penalty of dismissal from service on the petitioner is bad in law.

15. The appellate authority in passing an order following such erroneous enquiry finding and penalty inflicted by the Enquiry Officer and the disciplinary authority and deciding the appeal against the petitioner herein has also committed grave error and hence the order passed by the appellate authority also equally becomes liable to be quashed.

16. For all the above discussions held, the penalty of dismissal from service inflicted by the disciplinary authority against the petitioner and further the order of the appellate authority passed confirming the said order of the disciplinary authority and dismissing the appeal preferred by the petitioner have been done wrongly wherein patent errors of law and perversity in approach are quite evident and hence the said orders are liable to be quashed.

In result,

- (i) the above writ petition succeeds and same is allowed;
- (ii) the order of Board of Directors of Cheran Transport Corporation made in its proceedings No. 61 77/MD/Law/CTC88 dated August 10, 1992 confirming the order of Managing Director, the second respondent herein, made in his proceedings No. 6177/Law/CTC/88 dated March 30, 1990 is hereby quashed;
- (iii) the petitioner is deemed to have continued in service from the date of the dismissal order passed by the second respondent i.e., from March 30, 1990 thus becoming entitled to all the service and salary benefits with continuity of service

till his due retirement, as though he had not been visited with the enquiry proceeding at all.

17. However, in the circumstances of the case, there shall be no order as to costs.