

(2018) 07 RAJ CK 0216

In the Rajasthan High Court

Case No : Civil Writs No. 17906 of 2016

Smt. Manju @APPELLANT@Hash Managing Director, Jaipur City Transport & Ors

Date of Decision : 23-07-2018

Acts Referred:

Citation : (2018) 07 RAJ CK 0216

Hon'ble Judges : Ashok Kumar Gaur, J

Bench : Single Bench

Advocate : Shiv Lal Meena, Vartika Mehra, Sandeep Pathak

Final Decision : Disposed Off

Judgement

Petitioner has filed the instant writ petition challenging the order dt. 3rd June, 2015, whereby services of the petitioner have been terminated on

account of misconduct being committed by him, carrying the passengers without ticket.Â Petitioner has filed an appeal before the Departmental

Authority and his appeal came to be dismissed vide order dt. 1st March, 2016.

Learned counsel for the petitioner submitted that the impugned order is punitive in nature and without holding the regular departmental inquiry, services

of the petitioner could not have been terminated.

Counsel for the petitioner places reliance on an order passed by this Court in S.B. Civil Writ Petition No. 10252/2015 (Manoj Meena Vs. The

Managing Director & Anr.) decided on 9th February, 2018.Â Counsel submitted that the impugned orders passed in the present writ petition requires

to be set aside, as the respondent could not have passed stigmatic order without holding proper enquiry.

Learned counsel for the respondents does not dispute the legal position, however she seeks liberty from the Court to permit them to hold regular

enquiry and not to pay back wages for the intervening period.

I have heard the submissions made by learned counsel for the parties.

This Court finds that the order dt. 1st March, 2016 and 3rd June, 2015 (Annex. 7) have been passed contrary to law as decided by this Court.Â The

order passed by this Court in S.B. Civil

Writ Petition No. 10252/2015 is quoted as hereunder:-

â??Petitioner has filed the instant writ petition challenging the order dt. 19th May, 2014, whereby services of the petitioner have been terminated on

account of misconduct being committed by him, carrying the passengers without ticket.

Learned counsel for the petitioner submits that the impugned order is punitive in nature and without holding the regular departmental inquiry, services

of the petitioner could not have been terminated.

Counsel submits that Division Bench of this Court in D.B. Special Appeal Writ No. 1407/2016 (Managing Director & Anr. Vs. Tara Chand Mahawar

and Anr.) and other connected petitions decided on 13th January, 2017, has also taken a view that order of termination on the ground of misconduct

can only be passed after regular enquiry is being conducted against the employee.

The Division Bench in D.B. Special Appeal Writ No. 1407/2016 (Managing Director & Anr. Vs. Tara Chand Mahawar and Anr.) and other

connected petitions, decided on 13th January, 2017, has passed the following order which is reproduced as hereunder:-

â??Admitting appeal on that point will be detrimental to the appellant.Â In that view of the matter, the alternative submission made by Mr. Rajendra

Prasad, AAG, which has been accepted that the reinstatement which has been directed by the learned Single Judge will be subject to further enquiry

against the present respondents and pending that enquiry, they will not ask for any benefit of confirmation since they are on probation.

While examining the matter, we are not expressing any opinion on the merits of the case. The order of termination is confirmed only in view of the

fact that the enquiry was not conducted.Â We are not expressing any opinion on the alternative remedy or anything but the reinstatement will be

subject to enquiry which shall be allowed to be conducted by the appellant with rider that the respondent will not be entitled for confirmation till

pendency of the enquiry.â??

Learned counsel for the respondent, Mr. Sandeep Pathak submits that the view taken by the employer while passing the impugned order dt. 19th May,

2014, was looking to the fact of serious misconduct committed by the petitioner, who was working on the post of Conductor. Counsel for the

respondent has also submitted that even during probation period, the petitioner had to render satisfactory service and the employer invoking Rule 13

(II) of Jaipur City Transport Services Ltd. Service Condition Standing orders, 2012, passed the impugned order.

Counsel for the respondent, however, does not dispute the legal position and only submits that the regular enquiry will be conducted against the

petitioner and in case he found guilty, the necessary action will be taken.

This Court in the case of Managing Director & Anr. Vs. Tara Chand Mahawar and Anr. (supra) has already taken a view that if enquiry was not

conducted against an employee, the employer is free to conduct enquiry and the employee concerned will not be entitled for confirmation till pendency

of the enquiry.

Accordingly, the present writ petition is allowed and the order dt. 19th May, 2017 is set aside.Â The respondents are at liberty to hold enquiry against

the petitioner and petitioner would not be entitled for any consequential benefits as well as confirmation till pendency of the enquiry.Â It is also made

clear that the petitioner is found to be exonerated in the department enquiry, the consequence will follow.

The present writ petition stands disposed of, accordingly.â??

The present writ petition involves identical issue. Accordingly, the present writ petition is allowed and the order dt. 3rd June, 2015 of Disciplinary

Authority and order of the Appellate Authority dt. 1st March, 2016 are quashed and set aside.Â The respondents would be at liberty to hold enquiry

against petitioner and petitioner would not be entitled for any consequential benefits as well as confirmation till pendency of the enquiry.Â It is also

made clear that in case petitioner is found to be exonerated in the Department Enquiry, the consequence will follow.

The present writ petition stands disposed of, accordingly.