(2010) 09 MAD CK 0213

Madras High Court

Case No: Writ Petition No. 43439 of 2006 and O.A. No. 3118 of 2000

D. Nagarajan		APPELLANT
	Vs	
The Assistant Commissioner (Commercial Taxes) Enforcement		RESPONDENT

Date of Decision: Sept. 16, 2010

Acts Referred:

- Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 - Rule 17

Hon'ble Judges: D. Hariparanthaman, J

Bench: Single Bench

Advocate: P. Mohan Raj, for the Appellant; Lita Srinivasan, Government Advocate, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

D. Hariparanthaman, J.

The Petitioner was working as Driver in the office of the Respondent. While he drove the van belonging to the office of the Respondent on 19.10.1991, the van involved in an accident with a cyclist in Tiruvallur District. Due to the accident, the cyclist died. It is admitted that no criminal case was filed relating to the accident. The legal heirs of the deceased filed a petition in M.C.O.P. No. 427 of 1991 before the Sub-Court, Motor Accident Claims Tribunal, Tiruvallur, claiming compensation. The Tribunal passed an order dated 29.12.1995 awarding a sum of Rs. 60,000/-to the claimants, along with 15% interest. The Respondent also complied with the order and paid a sum of Rs. 1,05,420.50 to the claimants.

2. While so, the Respondent issued a charge memo dated 06.09.1996 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules stating that the Petitioner was responsible for the accident and he only drove the vehicle rashly and negligently.

3. After a detailed enquiry, the Enquiry Officer gave his report dated 03.11.1999 holding that the charges were not established. The Respondent sent a letter dated 23.12.1999 enclosing the findings of the Enquiry Officer and directed the Petitioner to make his explanation on the findings of the Enquiry Officer. The Petitioner sent a reply dated 17.02.2000 to the Respondent pointing out that the findings of the Enquiry Officer was in his favour and that therefore, the disciplinary proceedings could be dropped.

4. While so, the impugned order dated 29.02.2000 was passed by the Respondent imposing the punishment of recovery of Rs. 1,05,420.50. In the said order, the Respondent held that the charges were proved and they disagreed with the findings of the Enquiry Officer.

5. Hence the Petitioner filed Original Application in O.A. No. 3118 of 2000 before the Tamil Nadu Administrative Tribunal praying to quash the aforesaid order dated 29.02.2000 of the Respondent.

6. The Respondent filed reply affidavit refuting the allegations made by the Petitioner.

7. On abolition of the Tamil Nadu Administrative Tribunal, the matter stood transferred to this Court and renumbered as W.P. No. 43439/2006.

8. The learned Counsel for the Petitioner submits that before the Motor Accident Claims Tribunal, the Petitioner was the first Respondent and the Respondent herein, was the second Respondent. The second Respondent examined the Petitioner as their witness and the second Respondent pleaded before the Tribunal that the Petitioner herein, was not responsible for the accident. Having taken such a stand, the Respondent was not justified in imposing the punishment of recovery for the accident.

9. The learned Counsel for the Petitioner has produced a copy of the judgment dated 29.12.1995 made in M.C.O.P. No. 427 of 1991 in this regard. Since the Enquiry Officer held that the charges were not proved, the Respondent ought to have furnished his differed findings to the Petitioner and his views thereon should have been obtained before coming to the final conclusion on the findings. But the same was not done in the present case. Hence, the impugned order is bad and illegal. Further, it has been held by a Division Bench of this Court in V. Arulkumar v. Housing and Urban Development Corporation Ltd. (Hudco) 2009 (3) CTC 388 that if the delinquent employee was not heard on the differed findings of the Disciplinary Authority, the punishment imposed on the delinquent employee based on such a finding is vitiated.

10. The learned Counsel for the Petitioner also relies on the order dated 07.07.1999 passed in W.P. No. 11002 of 1999 by the First Bench of this Court (Chief Engineer, Agricultural Engineering and Ors. v. T. Devaraj and Anr.).

11. On the other hand, the learned Government Advocate submits that there is no infirmity in the impugned order and in any event, the matter could be remanded back to the Respondent for fresh consideration.

12. I have considered the submissions made on either side and perused the materials available on record.

13. In this case, the Respondent filed a counter statement before the Motor Accident Claims Tribunal stating that the Petitioner was not responsible for the accident. The same has also been extracted in para 3 of the order of the Motor Accident Claims Tribunal that was placed before this Court. Before the Motor Accident Claims Tribunal, the Petitioner herein was examined as the witness for the Respondent herein, in support of their defence that the Petitioner was not responsible for the accident. Having taken such a stand, the Respondent could not take a different stand for imposing the punishment of recovery.

14. Further, as rightly contended by the learned Counsel for the Petitioner that in an identical situation, a Division Bench of this Court in W.P. No. 11002 of 1999 (decided on 07.07.1999) held that the employer could not recover the compensation paid in motor accident cases from the employee.

The relevant passage from the said judgment is extracted hereunder:

In our view, the claim made is wholly unsustainable as the Petitioners in the capacity of the employers of Respondent No. 1 are duty bound in law to pay the compensation payable by Respondent No. 1. Present proceeding which have been initiated for recovery back the said amount from Respondent No. 1, in the circumstances, is therefore summarily rejected.

15. The said judgment also applies to this case. Moreover, the departmental action initiated by the Respondent ended in the findings recorded by the Enquiry Officer that the Petitioner was not guilty of the charges. A Division Bench of this Court (2009 (3) CTC 388) also held that it is mandatory for the employers to record the tentative conclusions on the differing views, if the views of the Enquiry Officer holding that the charges were not proved, was not acceptable to the Disciplinary Authority and the delinquent employee should be heard before recording a finding of guilt. But the said mandatory procedure was not followed in the present case. In view of the aforesaid infirmities, I am not inclined to remand the matter to the Respondent, as requested by the learned Government Advocate.

16. For all the aforesaid reasons, the impugned order is quashed and the writ petition is allowed. No costs.