

M. Mayandi

Vs

Director, Tamil Nadu State Transport Department

Civil Appeal No. 794 of 1979

(A.C. Gupta, D.A. Desai JJ)

22.01.1981

ORDER

1. The appellant who was employed as a driver in Tamil Nadu State Transport Department in the city of Madras was suspended from duty pending inquiry into certain charges leveled against him following an incident that took place on August 19, 1970. The charges were that he -

(1) refused to pick up intending passengers;

(2) refused to proceed further on the line in spite of request by Checking Inspector and by the duty conductor;

(3) stopped other buses at Safire Theatre in F. No. A-583 of Route 18 and F. No. A-990 of Route 11; and

(4) misbehaved towards the Checking Inspector.

2. The appellant's explanation to the charges was not found satisfactory by the authorities and an inquiry was held by the Traffic Superintendent attached to the Office of the State Transport Department. Ultimately, the Joint Director of the State Transport Department by his order dated July 5, 1972 dismissed the appellant from service. The appeal taken by the appellant to the Director of Tamil Nadu State Transport Department also failed. The appellant thereafter filed a writ petition in the Madras High Court challenging the order of dismissal. A single Judge of the High Court found on charge 1 and 2 that on the facts of the case the order of the Checking Inspector that the appellant refused to obey would have exposed the appellant to an offence punishable under Section 123 of the Motor Vehicles Act and that he was therefore justified in disobeying that order. The learned Judge held that charges 1 and 2 were unsustainable. He also held on a consideration of the evidence of the drivers of the two buses which were alleged to have been stopped by the appellant that there was no material to support charges 3 and 4 and the said charges could not be taken to have been proved. The single Judge, accordingly allowed the writ petition and set aside the order of dismissal of the appellant.

3. On appeal by the Director of Tamil Nadu State Transport Department, a Division Bench of the High Court set aside the order of the single Judge. Before the Division Bench, the correctness of the finding recorded by the single Judge on charges 1 and 2 was not questioned. On charges 3 and 4, the Division Bench thought that there was material to substantiate the said charges. The view taken by the Division Bench appears to rest on the answers given by the Checking Inspector to certain questions put to him on cross-examination. In reply to one question the Checking Inspector said :

"You had stopped the other two buses". It was not noted, however, that the drivers of the said buses had denied that they were made to stop their buses by the appellant. This was pointed out by the single Judge in his Judgment. The other piece of evidence on which the Division Bench relies is the following given by the Checking Inspector to another question :

4. "That you had created a scene and had held up vehicles were witnessed by Flying Squad sub-Inspector and other sub-Inspectors and traffic constables. Since you had refused to take vehicle on line, they had difficulty in clearing the traffic jam." The traffic jam was due to the refusal of the appellant to proceed with a bus which was overcrowded in violation of the provisions of the Motor Vehicles Act. As already stated the correctness of the finding on charges 1 and 2 was not questioned before the Division Bench. The conduct of the appellant in refusing to move his bus has been held to have been justified.

5. We have gone through the evidence ourselves. We do not also find any evidence to substantiate charges 3 and 4. Accordingly we allow this appeal with costs; the order of the Division Bench is set aside and that of the single Judge is restored.

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