



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2019

CORAM

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THE HON'BLE MR.JUSTICE S.S.SUNDAR

W.P(MD) .No.21441 of 2015

Amalraj

...Petitioner

Vs.

1.The Management of
Tamil nadu Transport Corporation, (Madurai) Ltd.,
Represented by its Managing Director,
Madurai.

2.The General Manager,
Tamil Nadu Transport Corporation,
(Madurai) Ltd.,
Dindigul Region,
Dindigul.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the punishment of increment cut for the period of three years with cumulative effect imposed by the second respondent in his Ref: Sathu:A8/58 dated 12.04.2011 as modified by the first respondent into increment cut for the period of two years with cumulative effect in his Ref: Sathu A8/4382 dated 17.01.2012, quash the same and consequently directing the respondents to grant 4th Review Benefit and to treat the period of suspension from 30.03.2010 to 28.04.2010 as duty with pay and all other attendant benefits including revision of retirement benefits.

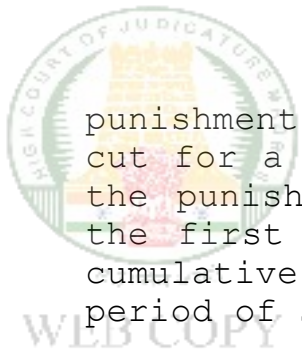
For petitioner : Mr.A.Rahul

For Respondents : Mr.J.Senthil Kumaraiah

ORDER

The petitioner has filed the writ petition to quash the punishment of increment cut for a period of two years with cumulative effect by the order of the first respondent.

2. While the petitioner was driving a bus, an accident occurred and a person died out of the accident. A show cause notice was issued to the petitioner for the rash and negligent driving by stating that a major accident was caused by the petitioner and after explanation, enquiry was conducted and



punishment was imposed by the second respondent imposing increment cut for a period of 3 years with cumulative effect. Subsequently, the punishment was modified by the Appellate Authority namely by the first respondent to one of increment cut for two years with cumulative effect. The order of second respondent to treat the period of suspension as eligible leave is not modified.

3. The learned counsel appearing for the petitioner submitted that the petitioner was not responsible for the accident. Though the finding of the enquiry officer was otherwise, the learned counsel for the petitioner pointed out that the management did not examine any one of the eye witnesses or the Conductor of the bus, who was on duty on the date of accident. Since the enquiry officer proceeded on the basis of presumption, it was contended that the findings of the disciplinary authority based on the enquiry report is vitiated. The learned counsel submitted further that the petitioner was also prosecuted for the criminal case registered for the offence under Section 304(A) IPC and that the criminal court has honourably acquitted the petitioner from the charges. Since the acquittal was honourable the learned counsel for the petitioner relied upon the Clause -61 of the settlement which was entered into between the management.

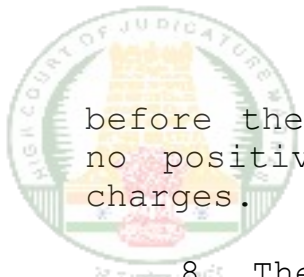
4. The Clause -61 of the settlement relied upon by the petitioner is extracted hereunder:

'Where a driver involved in an accident and held guilty of charge in domestic enquiry subsequently honourably acquitted in the criminal case, the decision in the disciplinary case on the same charge may be revised based on the orders of the court. However, if the acquittal is by benefit of doubt, no such revision is necessary.

5. By referring to the above settlement it was then contended by the learned counsel for the petitioner that the respondents are expected to review the order of punishment since the petitioner has been honourably acquitted.

6. The learned counsel then relied upon the counter affidavit filed by the respondent Corporation before the Motor Accident Claims Tribunal in the petition filed by the victim of the accident claiming compensation.

7. In the counter affidavit, the respondent has specifically denied the allegation that the accident was caused by the driver of the vehicle. It is further submitted that having taken a stand that the petitioner was not responsible for the accident before the Tribunal it is not open to the management to support the charges. It is also stated that the stand taken by the management



before the Tribunal shall be considered especially when there is no positive evidence to hold that the petitioner is guilt of charges.

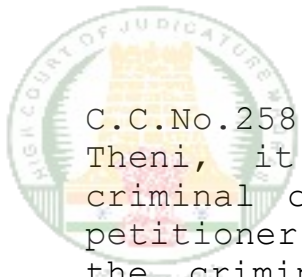
8. The learned counsel appearing for the respondent however submitted that the writ petition is liable to be dismissed on the ground of delay and laches. He would also submit that the punishment was imposed by order dated 12.04.2011. It is modified by the appellate authority by order dated 17.01.2012. However, the writ petition has been filed only in the year 2015 challenging the order of the Appellate Authority namely the first respondent. Since there was no explanation in the affidavit filed in support of the delay, the writ petition is liable to be dismissed on the ground of delay and laches.

9. The learned counsel for the respondent also raised an objection as to the maintainability of the writ petition. The learned counsel submitted that the petitioner has alternative remedy before the Industrial Tribunal by raising the dispute through Union under Section 2 K of the Industrial Disputes Act. Since he has not availed the alternative remedy and the issue raised by the petitioner in the writ petition involve decision on disputed questions of facts it would be appropriate for the petitioner to avail alternative remedy instead of approaching this Court under Article 226 of the Constitution of India. Further, it is reiterated that the enquiry officer found the petitioner guilty of charges. The enquiry officer found that victim and the petitioner were responsible for the accident. The learned counsel for management submitted that the verdict of the criminal court is not in favour of petitioner to treat acquittal as honourable as the criminal court has ultimately observed that the charge against the petitioner was not proved beyond reasonable doubt.

10. This Court has considered the rival submissions.

11. With regard to maintainability of the writ petition, though it is true that the dispute can be raised through Union, the alternative remedy is not effective and efficacious having regard to the circumstances of this case. The petitioner is not challenging the order of termination, where he can approach the Labour Court directly. However, it is admitted that the petitioner retired on 31.01.2012. It is in this circumstances, it would not be convenient for the petitioner to approach the Labour Union and to raise the industrial dispute. This writ petition was filed in the year 2015 and pending for more than 4 years. Hence, it is not desirable for this Court at this stage to dismiss the writ petition by citing the availability of alternative remedy.

12. With regard to the judgment of the criminal court in



C.C.No.258 of 2011 on the file of the learned Judicial Magistrate, Theni, it should be pointed out that the conclusion of the criminal court was that the charges are not proved against the petitioner. Close reading of the entire judgment would show that the criminal court's finding is that there is no sufficient evidence and that the statement of P.W.1 and the evidence of P.W.1 and P.W.2 are not reliable as their versions in the cross examination are mutually contradictory. The Court found that the case of the victim is probable as the version of prosecution with regard to the cause of the accident in that period. and manner in which the victim was killed during accident is not proved. It is in the said circumstances, this Court is of the view that the acquittal of the petitioner is honourable and therefore, the petitioner is entitled to the benefit of Clause-61 of the Settlement.

13. The punishment was imposed based on the basis of enquiry Report without considering the explanation of the petitioner. In the departmental proceedings no one who had witnessed the accident was examined. Therefore, it was only based on presumptions the enquiry officer held that the victim and the petitioner were responsible for the accident.

14. In the said circumstances, the decision of the criminal court is relevant. Though the writ petition is filed challenging the order of punishment imposed by the second respondent and modified by the first respondent, this Court is of the view that the petitioner is entitled to benefit of Clause - 61 of the settlement as quoted above.

15. As per the terms of Clause - 61, the respondent has to revise the punishment in the light of the verdict of the criminal court.

16. The learned counsel for the petitioner would state that the petitioner has already retired and therefore, allow him to go before the respondent once again would cause more inconvenience to him and such course may not be justified after this length of time. It is further stated that punishment may be modified by increment cut for a period of two years without cumulative effect. The suggestion of the learned counsel appearing for the petitioner appears to be more practical. Even though the learned counsel for the respondent has some objections, this Court is of the view that the petitioner is entitled to some lenience regarding quantum of punishment after the order of criminal court acquitting the petitioner.

17. Considering the above the writ petition is allowed, the impugned orders are set aside. Further, this Court issue the



following directions:

- i) The punishment on the petitioner is modified as one of increment cut for a period of two years without cumulative effect.
- ii) It is stated that as per the standing orders, a person who was imposed with the punishment of stoppage of annual increment shall be deemed to be on duty during the period of suspension. Hence the petitioner is also entitled to consequential benefit by treating the period from 30.03.2010 to 28.04.2010 as duty with pay and other benefits.

18. In the result, this writ petition is allowed with the above direction. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To,

1.The Management of
Tamil nadu Transport Corporation, (Madurai) Ltd.,
Represented by its Managing Director,
Madurai.

2.The General Manager,
Tamil Nadu Transport Corporation,
(Madurai) Ltd.,
Dindigul Region,
Dindigul.

+1 CC to M/s.J.SENTHIL KUMARAI AH, Advocate (SR-94751[F] dated 25/10/2019)

+1 CC to M/s.A.RAHUL, Advocate (SR-94817[F] dated 25/10/2019)

W.P(MD) .No.21441 of 2015
24.10.2019

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