

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.12.2020

C O R A M

The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition No.6635 of 2011

[illegible]

1. The Managing Director,
The Tamil Nadu State Transport Corporation (Villupuram)
Limited,
Kanchipuram Region,
Kanchipuram District.
2. The General Manager,
Tamilnadu State Transport Corporation (Villupuram) Ltd.,
Kanchipuram Region,
Kanchipuram District. Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari Mandamus calling for the entire records connected with the order of punishment Ku.No.242/2142/S12/TNSTC(Villupuram), Kanchi/06 dated 19.11.2008 passed by the 2nd Respondent which was modified by the order of the 1st Respondent Ku.No.242/2142/S12/TNSTC/06 dated 07.04.2009 and quash the same, consequently direct the Respondents to pay back the amount that they have deducted and collected from the Petitioner pursuant to the above order of punishment.

For Petitioner : Mr.K.Thilageswaran

For Respondents : Mr.C.S.K.Sathish

ORDER

I heard Mr.Thilageswaran, the learned counsel for the Petitioner and Mr.C.S.K.Sathish, the learned counsel for the Respondent,Transport Corporation.

2. The Petitioner was provisionally appointed as a driver in the Respondent Transport Corporation on 17.07.1981 and, subsequently, he was absorbed as a permanent employee on 17.07.1983. On 08.07.2006, while driving the bus bearing No.TN 21 N 0646 from Kanchipuram to Tambaram, a commuter of the said bus de-boarded while the bus was running and sustained fatal injuries as a result thereof. Pursuant thereto, a charge memo was issued to the Petitioner on

21.07.2007. In respect thereof, the Petitioner submitted an explanation on 15.09.2007. Thereafter, the enquiry proceedings culminated in the report dated 29.03.2008 of the enquiry officer whereby it was concluded that the Petitioner is responsible for the accident. 3. Accordingly, a second show cause notice dated 22.09.2008 was issued to the Petitioner and the impugned order of punishment dated 19.11.2008 came to be issued whereby the punishment of increment stoppage for a period of five years was imposed. The Petitioner filed an appeal in respect thereof and by order dated 07.04.2009, the punishment was modified to an increment stoppage for a period of three years instead of five years. Thereafter, it appears that the Petitioner paid the sum of Rs.1,28,563/- to the Respondent on 26.08.2009 presumably towards excess payments received. The present writ petition is filed in these facts and circumstances.

4. The learned counsel for the Petitioner, Mr.Thilageswaran, submitted that the Petitioner was not responsible for the accident. In support of this contention, he referred to and relied upon the report of the enquiry officer. In particular, he relied upon internal page 5 of the enquiry officer's report wherein it is recorded that the passenger was responsible for the accident inasmuch as he de-boarded the bus when it was running and was not at a bus stop. In light of this finding, he contends that the Petitioner should not have been held responsible for the accident. His second contention is that at the time of retirement, the Petitioner was informed that his terminal benefits would not be released unless he makes good the amount claimed. He also submits that he was assured that the punishment would not be implemented if such amounts are paid. Accordingly, he paid a sum of Rs.1,28,563/- as evidenced by the cash receipt dated 26.08.2009. According to him, the implementation of the punishment after receiving the said sum is unjust. His third contention is that the last drawn basic pay of the Petitioner was a sum of Rs.10,035/- as evidenced by the salary slips at pages 33 to 35 of the typed set of papers. Accordingly, he submits that the order dated 07.04.2009, which erroneously reflects the reduction of the basic pay from Rs.9,915/- to Rs.6,675/- is liable to be interfered with.

5. On the contrary, Mr.C.S.K.Sathish, the learned standing counsel for the Transport Corporation submits that the Petitioner has only challenged the punishment whereas the finding that the Petitioner was responsible for the accident attained finality. In light of the fact only the punishment is challenged, he submits that the scope of judicial review is very narrow. Given the fact that the carelessness of the driver resulted in a fatal accident, he submits that the punishment of stoppage of increment for three years is clearly proportionate. He also adds that the Petitioner did not resort to proceedings under Industrial Disputes Act 1947, although such statutory remedy was available. As regards the recovery

of the amount, he points out that the said amount was paid voluntarily by the Petitioner and that the Respondent Corporation cannot agree not to impose a punishment after the disciplinary proceedings culminated in the order of punishment, which was confirmed subject to a modification in the punishment. For all these reasons, he submits that the writ petition is liable to be dismissed.

6. I considered the submissions of the learned counsel for the respective parties and examined the materials on record.

7. As regards the finding that the Petitioner was responsible for the accident, the learned counsel for the Petitioner relied largely on the report of the enquiry officer. Upon perusal thereof, I find that the enquiry officer has taken note of the fact that the passenger de-boarded the bus while it was running and was, therefore, partly responsible for the accident. Nonetheless, the enquiry officer also recorded that if the driver had slowed down the bus, the accident could have been averted. These findings are based on a reasonable appraisal of the evidence on record. In light of the settled position that this Court does not examine the sufficiency of evidence in judicial review and only interferes if the conclusions in the disciplinary proceedings are perverse, I am of the view that the Petitioner has failed to demonstrate that the findings in the enquiry report or in the punishment order of the disciplinary authority are perverse. This is also not a case where the principles of natural justice were violated.

8. As regards the quantum of punishment, the record discloses that originally the punishment of stoppage of increment for five years was imposed, which was subsequently modified to stoppage of increment for three years. Given the fact that it was a fatal accident and there is a finding that the driver was partly responsible for the same by failing to drive more carefully by slowing down the bus, it cannot be said that the punishment is so disproportionate as to shock the conscience of the Court.

9. With regard to the recovery of a sum of Rs.1,28,563/-, as correctly contended by Mr.C.S.K.Sathish, the punishment which has been confirmed subject to modification cannot be interfered with because of this payment by the Petitioner. The learned counsel for the Respondent also raised an ancillary issue with regard to the basic pay of the Petitioner being Rs.10,035/- and not Rs.9,915/-. In effect, his contention is that the calculation is incorrect and should have been made on the basis of the basic pay of Rs.10,035/-. This aspect is outside the scope of this writ petition. Nonetheless, the Petitioner is granted leave to submit a representation in respect thereof. Upon receipt of such representation, the Respondent shall consider the same and

dispose of such representation on merit by a reasoned order within a period of three months from the date of receipt of such representation.

10. This writ petition is disposed of on the above terms. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

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The Tamil Nadu State Transport Corporation (Villupuram)
Limited,
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2. The General Manager,
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