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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.08.2020

DELIVERED ON : 02.09.2020

CORAM:

THE HONOURABLE **MR. JUSTICE RMT. TEEKAA RAMAN**

W.P. (MD) No. 2843 of 2012

and M.P. (MD) No. 1 of 2012

N. Lukose

... Petitioner

Vs.

1. The Managing Director,
Tamil Nadu State Transport Corporation,
Tirunelveli.

2. The General Manager,
Tamil Nadu State Transport Corporation,
Nagercoil Division,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records passed by the second respondent herein in No. 1664/Legal-4/Olungu/Ta. Na. A. Po. Ka/2010, dated 11.02.2012 and the consequential order passed in memo No. 2599/Sa pa pe 7/Ta. Na. A. Po. Ka. (Tili) Nagar/2004 dated 24.02.2012 and quash the same.

For Petitioner	: M/S. Padmavathy for M/S. K. Vamanan
For Respondents	: Mr. K. Sathiyasingh Standing Counsel

ORDER

This writ petition is filed challenging the order of punishment of stoppage of increment for three years with cumulative effect and consequential order of recovery of a sum of Rs. 46,642/-.

2. The petitioner is the driver in the first respondent Transport Corporation and as there was an accident in which two of the persons travelled in the two wheeler died and hence, departmental enquiry was conducted. Initially, a charge memo was issued as the petitioner has offered his explanation. Subsequently, on the death of one more person involved in the accident second charge memo was issued. During the enquiry, he has not appeared and hence, after following the procedure the charges are held to be proved and stoppage of increment with cumulative effect was ordered. Consequently, a sum of Rs. 46,642/-, was ordered to be recovered. Since the order was not implemented before retirement, and order of recovery was ordered. The petitioner has challenged both the orders by way of this Writ Petition.

3. Counter has been filed. Heard the learned counsel appearing for the respondents.



4. It is seen from the records that the petitioner was on duty 10.05.2010 as driver in the bus bearing Regn.No.TN74/N843 in the trip from Kalliyakkavilai - Kanyakumari at Pazhaya Pothyadi, drove the bus rash and negligence and dashed against Motor Cyclist with two pillion riders came from the opposite direction and caused two deaths and one injury. As such the petitioner was suspended from duty by an order dated 12.05.2010 and charge sheeted by the memo dated 10.12.2010.

5. The petitioner had not submitted any explanation. Therefore, it was ordered to conduct an enquiry. As the petitioner has not participated in that enquiry, the enquiry was set ex-parte. The Enquiry Officer had held that the charges against the petitioner were proved. Based on the report of the enquiry officer and also considering the past records a show cause notice, dated 16.01.2012 proposing the punishment of three year increment cut with cumulative effect was issued. As nothing is heard from the petitioner the punishment proposed was confirmed as of two year increment cut with cumulative effect and the suspension periods is treated as eligible leave, by an order dated 11.02.2012. As the petitioner had retired from service on 29.02.2012 the punishment imposed could not be effected in full. Hence, the monetary value for non effected portion of punishment worked out for a sum of Rs.46,642/- was adjusted against terminal benefits after issuing and prior notice dated 24.02.2012.

6. The learned counsel for the petitioner relied on the order of acquittal by the Criminal Court. On perusal of the judgment of the learned Judicial Magistrate Court, P.W.1 has clearly spoke about rash and negligent driving of the petitioner. However, the learned Judicial Magistrate has taken a view that petitioner has not committed any rash and negligence in driving, without any reasoning nor even the discussion to disbelieve the evidence of P.W.1 therein. Hence, I am of the considered view that the order of acquittal by the Criminal Court will not advance the case of the petitioner. Be that as it know, the standard of evidence required for the departmental proceedings is as that preponderance of probability and the same is held be proved in this case in the departmental proceedings.

7. In view of the finding of the fact that the enquiry officer has conducted the enquiry in proper manner and there is no procedural violation in the conducting of enquiry. Primarily, the petitioner has not participated in the enquiry and the enquiry report does not suffer from any illegality. The Disciplinary Authority has rightly held that the charges are proved and inflicted punishment of stoppage of increment with cumulative effect for two years and since the petitioner was retired from service on 29.02.2012, same was calculated on money terms and a sum of Rs.46,642/- was adjusted against terminal benefits and hence, I do not find any merits in this writ petition. Accordingly, the impugned order dated 11.02.2014 and the consequential order of



recovery dated 24.02.2012 are hereby confirmed.

8. In the result, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Assistant Registrar (CSII)

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Pre-Delivery Order Made in
W.P. (MD) No. 2843 of 2012
02.09.2020

KB(10.09.2020) 3P 1C