



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.08.2020

DELIVERED ON : 07.09.2020

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CORAM:

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

W.P. (MD)No.19293 of 2013

and M.P. (MD)No.1 of 2013

T.Selvaraj

... Petitioner

Vs.

1.The Managing Director,
Tamilnadu Transport Corporation,
Chennai - 2

2.The Branch Manager,
Tamilnadu Transport Corporation
Marthandam, 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 pertaining to the proceedings in AA.No.573/13471/DL.3/AVBOHA/2012, dated 14.11.2012 issued by the second respondent as confirmed in Ku.No.27063/DL3/AVBOHA/2013, dated 13.06.2013 of the first respondent and quash the same as illegal, arbitrary and unconstitutional.

For Petitioner	: Mr.V.M.Balamohan Thambi
For Respondents	: Mr.K.Sathiya Singh
	Standing Counsel

ORDER

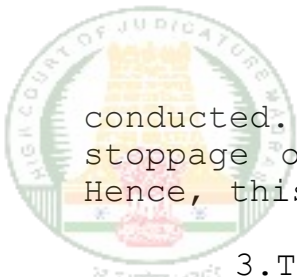
The petitioner challenges the order of punishment imposing for the accident committed by him in course of his employment as Driver.

2.Brief facts for determination of this petition are as under:

2(i)The petitioner herein worked as Driver, EDP No.5809 at Marthandam Depot. The petitioner was while on duty in Fleet No.B0369 in Rout No.669 on 15.03.2011 from Tiruppur to Marthandam, the bus met with an accident near Palladam. One lady pedestrian injured and died in Dharapuram Government Hospital.

2(ii)The accident spot was inspected and a report also filed, based on which, a show cause notice was issued and enquiry was

<https://hcservices.ecourts.gov.in/hcservices/>



conducted. During the enquiry, charges were held to be proved and stoppage of increment was ordered and appeal was also confirmed. Hence, this writ petition.

3.The learned counsel appearing for the petitioner submitted that the accident has not taken place due to the rash and negligence on the part of the petitioner/Driver. It is due to the lady, who is mentally retarded person, wandering in road at 10.45 p.m., on 15.03.2011 and she suddenly cross the road and caused the accident. Relied upon the referred charge sheet filed by the Police before the concerned Magistrate the petitioner's counsel submitted that Departmental Enquiry was not properly conducted and no eye witnesses and aggressive witnesses are examined and hence, both the orders passed by the Disciplinary Authority and the Appellate Authority are bad in law.

4.Per contra, the learned Standing Counsel for the Transport Corporation submitted that there is no procedural violation in conducting of Department Enquiry and hence, taking into consideration of the fact that the petitioner caused accident, the report of the Enquiry Officer was accepted and stoppage of increment for a period of two years with cumulative effect was ordered on 14.11.2012 and the same was confirmed in an appeal on 13.06.2013.

5.After hearing the rival submissions and perusing the document, it is seen that even in FIR, it is specifically stated by the Village Administrative Officer that the lady is a mentally retarded person, who was wandering in the road at midnight and the accident was happened. Hence, there is no eye witnesses. After investigation, the Inspector of Police, Kundadam Police Station, Tiruppur District, has filed referred charge sheet before the learned Judicial Magistrate, Dharapuram, in R.C.S.No.23 of 2011, dated 02.04.2011 stating that since the accident has taken place due to the negligence on the part of the pedestrian, who is mentally retarded person and case has been closed as mistake of fact.

6.While that being so, in the enquiry, no independent witnesses and occurrence witnesses have been examined except on the First Information Report, which is admittedly hearsay. Further more, in the enquiry, the Department has not examined any occurrence witnesses and hence, I find that the finding rendered by the Enquiry Officer and confirmed by the Appellate Authority is un-sustainable in law. The Enquiry Officer has erroneously concluded the enquiry as preponderance probability of the charges have been proved.

7.Taking into consideration of the entire circumstances, I find that the finding of the Enquiry Officer in the enquiry report is un-sustainable in law and accordingly, the same is vacated. The orders passed by the Disciplinary Authority and the Appellate Authority appears to be lacks application of mind and both the



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

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Assistant Registrar(CS-II)

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Sub Assistant Registrar(CS)

gns

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To

1. The Managing Director,
Tamilnadu Transport Corporation,
Chennai - 2
2. The Branch Manager,
Tamilnadu Transport Corporation
Marthandam, Kanyakumari District.

+1 CC to M/s.V.M. BALA MOHAN THAMPI, Advocate (SR-16285[F] dated 09/09/2020)

Order Made in
W.P. (MD) No.19293 of 2013
07.09.2020

scr(CO)

TR(15.09.2020) 3P 4C