



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P. (MD) No.4499 of 2020

and

W.M.P. (MD) .No.3811 of 2020

WEB COPY

M.Sathiyaseelan

... Petitioner

Vs.

1.Managing Director,
Tamil Nadu State Transport Corporation
(Madurai) Ltd.,
Madurai - 16.

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

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for records connected with the impugned order passed by the 1st respondent in Parvai:Sathu:A2580, dated 06.02.2020 and quash the same and to consequently direct the respondents to drop the punishment of increment cut for 9 months in full based on the action dropped report dated 24.03.2010 submitted by the Inspector of Police, Dindigul Taluk Circle Police Station before the Judicial Magistrate - I, Dindigul, along with cost of Rs.10,000/- for compelling the petitioner to file this writ petition for dropping the punishment.

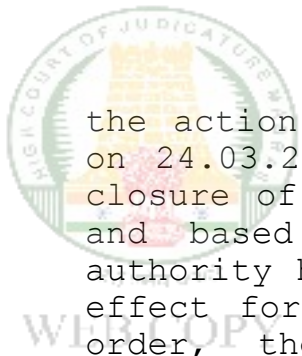
For petitioner
For respondents

: Mr.S.Govindan
: Mr.J.Senthil Kumaraiah

ORDER

By consent of both the parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

2. The learned counsel for the petitioner submitted that the petitioner was appointed as Driver on 22.01.1999. While the petitioner was duty on 24.02.2010, an accident occurred, in which a rider of a two wheeler died on the spot. For the said occurrence, a criminal case was registered and a disciplinary proceedings was initiated. Based on the report of mistake of fact by the Police,



the action against the petitioner in the criminal case was dropped on 24.03.2010. But, the Enquiry Officer, without considering the closure of the criminal case, has held that the charges are proved and based on the said report, the 2nd respondent/disciplinary authority has imposed a punishment of increment cut with cumulative effect for two years by order dated 30.07.2010. As against that order, the petitioner preferred an appeal before the first respondent on 16.02.2012.

3. The learned counsel for the petitioner would further submit that as per Clause 61 of 12(3) settlement dated 30.09.1992, where a Driver involved in an accident and held guilty of charge in domestic enquiry and subsequently 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. The first respondent/appellate authority, without considering the above aspect, has reduced the punishment as one year increment cut with cumulative effect, by order dated 28.05.2012. As against that order, the petitioner has filed a petition in W.P.(MD).No.14780 of 2018 before this Court and this Court, by order dated 10.07.2018, directed the respondents to revise the punishment inflicted on the petitioner as modified by the appellate authority, in view of the action drop report dated 24.03.2010 and in the light of Clause 61 of the settlement under Section 12(3) of the Industrial Disputes Act, within a period of six weeks. As the respondents did not consider the matter within the time stipulated, the petitioner had filed a contempt petition in Cont.P.(MD).No.1874 of 2019. Thereafter, the first respondent by the impugned order dated 06.02.2020, has reduced the punishment as 9 months increment cut with cumulative effect. As against that order, the petitioner has filed this writ petition. The criminal case based on which disciplinary proceeding has been initiated, has already been closed as mistake of fact and therefore, the respondents ought to have fully dropped the disciplinary proceeding and the punishment imposed. But, they have erroneously dragged the petitioner to approach this Court again and again by imposing punishment of increment cut and reducing the same to a limited extent. Thus, he prayed to set aside the impugned order and to consequently direct the respondents to give service and monetary benefits.

4. The learned counsel appearing for the respondents submitted that though the criminal case registered against the petitioner has been dropped, it is not a case of Hon'ble acquittal. However, considering the closure of the criminal case alone, the punishment imposed on the petitioner has been reduced and therefore, the impugned order need not interfered with. Thus, he prayed to dismiss this writ petition.



5. Admittedly, the disciplinary proceeding has been initiated based on registration of a criminal case. The said criminal case has been registered only on the presumption that the petitioner might have been solely responsible for the accident and the death of the two wheeler rider. The Police, after enquiry, has filed a report as mistake of fact before the learned Magistrate and based on the same, the action in the criminal case was dropped. As the criminal case has been closed as there is no fault on the part of the petitioner, the disciplinary proceeding could have been dropped by the respondents. Even if there is any punishment imposed, in the meantime, it could have been withdrawn by the respondents. But, in this case, the respondents, without withdrawing the punishment imposed and without closing the disciplinary proceeding, has been dragging the petitioner to approach the appellate forum by reducing the punishment to a limited extent.

6. According to the respondents, it is not a case of honourable acquittal. But, the fact remains that it is a case better than a case of honourable acquittal, because, the very complaint itself has been closed as there is no truth in it and there is no fault on the petitioner. Even in the cases of acquittal after trial, this Court, time and again, held that once an employee is acquitted from the criminal case, the departmental action initiated based on the very same reason and punishment imposed are completely vitiated.

7. In a case of acquittal after trial, a learned Single Judge of this Court in the case in **Gurusiddappa Vs. Office of the Group Commandant, Central Industrial Security Force, rep. by its Group Commandant, Ministry of Home Affairs, Chennai and others**, reported in **2018 (4) LLN 530 (Mad.)** has held in paragraph Nos.12 and 13 as follows:

"12. This Court has given its anxious consideration to the submissions made on behalf of the learned counsel for the petitioner as well as the respondents. Firstly, this Court has to see whether the charges are held proved in the Department Enquiry in the teeth of the clear finding given by the Criminal Court stating that the entire prosecution case was a cooked up story. Once the Criminal finding has become final, the Departmental action proceeded against the petitioner on the same set of facts and circumstances cannot be countenanced by law, as the petitioner was admittedly acquitted not on technicalities but on merits. Once the petitioner has been acquitted on merits, the Departmental action in imposing the penalty for the same incident, is completely without any justification. Therefore, this Court is of the considered view that the petitioner has to succeed



on this ground alone. Even otherwise, when one side the Criminal Court has given a clear acquittal viz., honourable acquittal to the petitioner, the Department cannot find the petitioner guilty of the same charges which was a subject matter of the Criminal prosecution. Such action on the part of the respondents cannot be justified under any circumstances. Since this Court is of the view that the Departmental action as proceeded against the petitioner is illegal and cannot be countenanced in law, it refrains from going into the issue of whether the penalty with cumulative effect can be imposed on the petitioner or not under the Service Rules.

13. In view of the above said narrative and discussion, this Court set aside the impugned proceedings No.V-15014/Rev/GS/SS/2010-85, dated 4.2.2011, proceedings No.V-11014/56/2006/L&R(SZ) 6460, dated 17.11.2006 and proceedings No.V-15014/GHC/AD.VI/GS/SSP/2005-1978, dated 14.06.2006. This Court is also of the considered view that the petitioner is entitled to be considered for promotion as Sub Inspector of Police with effect from the date of his juniors were considered for such promotion with all attendant and service benefits as admissible to the petitioner. The respondents are directed to implement the direction passed by this Court within a period of eight weeks from the date of receipt of a copy of this order."

8. The above decision is squarely applicable to this case. More over, in this case, it is seen that the charges have been framed against the petitioner only for causing the accident and for causing loss to the Corporation by his negligence act. There cannot be any dispute that no one has an intention to invite an accident voluntarily and no one willing to be a cause for an accident. Most of the accidents are being happened in a sudden moment by negligence of one party or both. In this case, the criminal complaint itself has been closed as there is no negligence/fault on the part of the petitioner. Hence, the punishment imposed by the respondents holding that he has committed the act of negligence/default without any evidence or without assigning any reason, are liable to be set aside.

9. In view of the above, the impugned order passed by the 2nd respondent dated 06.02.2020 and also the orders dated 30.07.2010 and 28.05.2012 imposing punishment are set aside. The respondents are directed to pay all the service and monetary benefits to the petitioner within a period of twelve weeks from the date of receipt of a copy of this order.



10. This Writ Petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

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Sub Assistant Registrar(CS)

Gcg

+1 CC to Mr.S.GOVINDAN, Advocate (SR-9712[F] dated 03/03/2020)

+1 CC to Mr.J.SENTHIL KUMARAI AH, Advocate (SR-9838[F] dated 03/03/2020)

Order made in
W.P.(MD) No.4499 of 2020
03.03.2020

VB(01.06.2020) 5P 3C