



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No.10835 of 2020

and

W.M.P. (MD) No.9532 of 2020

M.Raja

... Petitioner

Vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation,
Bypass Road, Madurai.

2.The General Manager,
Tamil Nadu State Transport Corporation,
Bypass Road, Dindigul.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling the impugned order in Parvi:DINGU:O.NA.THU:WP/15106/2019 dated 19.03.2020 on the file of the 1st respondent and to quash the same as illegal and consequently directing the respondents to disburse the full terminal benefits after full pension to the petitioner.

For Petitioner :Mr.S.Saji Bino
For Respondents :Mr.J.Senthil Kumaraiah,
standing counsel

ORDER

The prayer sought for in this writ petition is for a Writ of Certiorarified Mandamus to call for the records of the impugned order dated 19.03.2020 passed by the 1st respondent and to quash the same.

2.The petitioner was a Driver in the respondent Corporation. On 05.05.2017, when he drove the bus belonging to the respondent Corporation bearing Registration No.TN 57 N 2320, it met with an accident, by which, he dashed with the lorry either which was stationed there or travelling in front of the vehicle with Registration No.TN 59 AF 8889. Because of the said major accident, 7 passengers travelled in the bus driven by the petitioner died and 14 other passengers sustained grievous injuries and also the bus driven by the petitioner was damaged to the extent of Rs.50,000/-.



3. Pursuant to the said accident involved, against the petitioner, disciplinary proceedings were initiated by the respondent Corporation and based on the enquiry officer's report that, all the charges framed against the petitioner were proved, the respondent Corporation was of the view to inflict punishment of removal of service against the petitioner and accordingly, show cause notice was given, seeking second explanation from the petitioner on the proposed punishment as well as finding given by the enquiry officer. After completing all these formalities, the respondents passed an order dated 19.07.2018, whereby, they inflicted punishment withholding 5 year increment with cumulative effect. As against the said order, it seems that, the petitioner has filed W.P.(MD) No.15106 of 2019 before this Court, where, a learned Judge of this Court, by order dated 05.07.2019, has rejected the said writ petition on the ground of non filing of appeal. Accordingly, the petitioner preferred an appeal before the appellate authority, who, after considering the said appeal filed by the petitioner dated 16.11.2019, has rejected the same by the present impugned order dated 19.03.2020. Against the said order, the present writ petition has been filed.

4. The learned counsel appearing for the petitioner would submit that, before the Motor Accidents Claims Tribunal, corresponding to the accident dated 05.05.2017, the respondent Transport Corporation filed a counter affidavit, where they have categorically stated that, the accident was not due to the rash and negligent driving of the petitioner, but only due to the rash and negligent driving of the driver of the lorry concerned. By heavily relying upon the said averment made by the respondent Transport Corporation in the counter affidavit filed before the Motor Accidents Claims Tribunal, the learned counsel appearing for the petitioner would submit that, when the respondent Transport Corporation itself has admitted candidly before the Court of Law that, the accident was taken place not due to the rash and negligent driving of the petitioner, now, the present punishment of withholding of 5 year increment with cumulative effect against the petitioner is a major punishment, which should not have been inflicted against the petitioner. Therefore, the present order confirming the said punishment is unsustainable and bad in law.

5. He would also submit that, in similar circumstances, several orders have been passed by this Court in number of cases, where, if the driver was responsible for the accident taken place and disciplinary proceedings ended in punishment and the said punishment has been confirmed by this Court, relying upon some of the decisions, in this regard, the learned counsel would urge before this Court that, the present impugned order passed by the appellate authority confirming the punishment awarded against the petitioner shall be intervenable and accordingly, the same can be intervened.



6.I have heard the learned counsel appearing for the petitioner and have perused the materials placed before this Court.

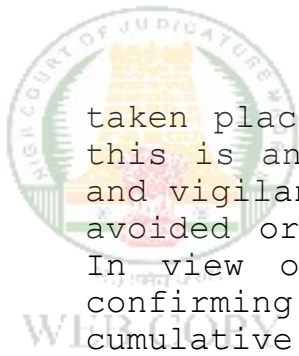
7.Insofar as the ground raised by the petitioner that, the respondent Transport Corporation has taken a stand before the Motor Accidents Claims Tribunal that, the petitioner was not rash and negligent, it is to be noted that, though the said stand was taken by the respondent Transport Corporation in the counter affidavit filed before the Motor Accidents Claims Tribunal, the said Tribunal has not accepted it and ultimately, they found guilty of rash and negligent against the petitioner, that is the reason why, compensation has been awarded.

8.In this case, it is to be noted that there were 11 cases of seeking compensation against the Transport Corporation, out of which, atleast, in 5 cases, compensation was awarded to the extent of Rs.44,07,500/-, which was paid by the Transport Corporation thereby, the respondent Corporation incurred a loss to the extent of Rs.44 lakhs and more due to the aforesaid accident, for which, the Tribunal found that the petitioner was guilty of rash and negligent.

9.When that being the position, independent departmental proceedings went on, where the decree of proof is only the preponderance of probability and based on which, the enquiry officer, after giving every opportunity to the petitioner, has concluded that, the charges framed against the petitioner has been proved . On the basis of the proven charges, it was originally proposed by the disciplinary authority to impose major punishment of removal from service and accordingly, based on such proposal, show cause notice was issued to the petitioner, which was properly seems to have been responded by the petitioner.

10.However, taking into account the factual circumstances and also specifically taking into account that, the petitioner, after having served for several years, was about to retire on superannuation from service on 31.07.2018, the respondent Transport Corporation/disciplinary authority taken a lenient view. Therefore, instead of making the major punishment of removal of service, they imposed punishment of withholding the increment for 5 years with cumulative effect. The said order since has been confirmed by the appellate authority, this Court feels that when comparing with the intensity of the accident taken place on the said date, i.e., 05.05.2017, where, the bus belonging to the respondents Corporation, the driver of the petitioner involved in the accident with the result, 7 persons died, 14 persons sustained grievous injuries and Rs.50,000/- loss sustained by the bus driven by the petitioner. That apart, Rs.44,07,500/- also has been paid by the transport Corporation towards compensation.

11.All these factual aspects would go to show that, in this service, the petitioner driven vehicle and the consequences



taken place at least 7 precious life have been taken away. Though this is an accident, suppose, the petitioner had taken utmost care and vigilant while driving the vehicle, the accident could have been avoided or the intensity of the accident could have been reduced. In view of the above, this Court feels that the present order confirming the punishment of withholding of 5 increment with cumulative effect against the petitioner as inflicted against him by the disciplinary authority is not on the higher side and also it cannot be stated that it was inflicted without any basis. Therefore, this Court has no hesitation to hold that the impugned order can very well be sustained and there is no plausible reason or ground available before this Court to interfere with the same.

12. In view of the aforesaid discussion and the factual matrix of this case, this Court is inclined to reject this petition. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Arul

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Managing Director,
Tamil Nadu State Transport Corporation,
Bypass Road, Madurai.

2. The General Manager,
Tamil Nadu State Transport Corporation,
Bypass Road, Dindigul.

+1 CC to M/s.B. SAJI BINO, Advocate (SR-15864[F] dated 03/09/2020)

W.P. (MD)No.10835 of 2020

03.09.2020

ARK (CO)

NR (04/12/2020) 4P : 4C

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