



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. [MD]No.587 of 2021

and

C.M.P. [MD]No.2672 of 2021

1.The 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.

... Appellants / Respondents

Vs.

M.Sathyaseelan

... Respondent / Writ Petitioner

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order dated 03.03.2020 in W.P.(MD)No.4499 of 2020 on the file of this Court.

Prayer in WP(MD). 4499 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Calling for the records connected with the impugned order passed by the 1st respondent in Parvai.sathu.A2580 dated 06-02-2020 quash the same and 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 Tk., 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 Appellants : Mr.J.Senthil Kumaraiah

For Respondent : Mr.S.Govindan

JUDGMENT

[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**]

We have heard Mr.J.Senthil Kumariah, learned counsel appearing for the appellant-Transport Corporation and Mr.S.Govindan, learned counsel appearing for the respondent / workman



2.The appellant Transport Corporation is aggrieved by the order passed by the learned Writ Court in W.P.No.4499 of 2020, dated 03.03.2020, filed by the respondent / workman.

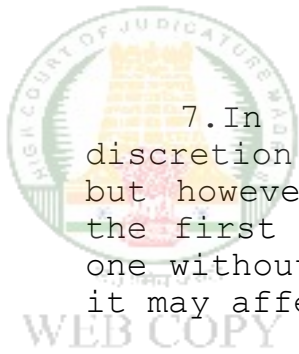
WEB COPY

3.The respondent / workman, challenges the order of punishment, dated 06.02.2020 imposed by the first appellant, directing stoppage of one increment with cumulative effect for a delinquency alleged to have been committed by the respondent. The learned Writ Court allowed the writ petition on the ground that the criminal case registered as against the respondent was closed as "mistake of fact" and if such is the position, it should be treated on a higher pedestal, than Hon'ble acquittal and therefore, in the departmental proceedings, the respondent could not have been held guilty and no penalty could have been imposed.

4.The disciplinary authority imposed a major penalty of stoppage of increment for a period of two years with cumulative effect, by order, dated 30.07.2010. The appellant preferred an appeal before the first appellant and prayed for review of the order of punishment. One of the grounds raised by the respondent / workman was by referring to a memorandum of settlement entered into between the Employees Union and the Management under Section 12(3) of the Industrial Disputes Act, 1947, dated 13.09.1992 and in Clause 61 of the settlement, in the case, where the employee is acquitted in the criminal case, the disciplinary authority may revise the punishment based on the orders of the Court. The first appellant exercising such power, reviewed the order of punishment and converted it into stoppage of increment for one year, but with cumulative effect.

5. In our considered view, the learned writ Court was not right in interfering with the exercise of discretion by the first appellant authority, especially, when such exercise of discretion was on account of an agreement between the Employees Union and the Management.

6.Furthermore, as pointed out by the learned counsel for the appellant, the language used is "may" and not "'shall'". Therefore, sufficient discretion has been given to the disciplinary authority to review the order of punishment, after orders are passed in a criminal Court. In the instant case, the criminal case registered against the respondent has been closed as "mistake of fact". However, the responsibility has been fixed on the Transport Corporation, by the Motor Accidents Claims Tribunal and compensation amount of more than Rs.10,00,000/- (Rupees Ten lakhs only), has been paid by the Transport Corporation to the victims family.



7. In such circumstances, we find that the exercise of discretion by the first appellant to be not wholly unsatisfactory, but however, considering the facts and circumstances of the case, the first appellant could have modified the punishment to that of, one without cumulative effect instead of cumulative effect, because, it may affect the respondent's pensionary and other benefits.

8. Furthermore, in terms of clause 61 of the settlement, it provides for such review of the punishment in cases of Hon'ble acquittal. The learned Single Bench has placed the closure of the criminal case as mistake of fact to be better than a case of Hon'ble acquittal. However, we do not fully subscribe to the said view, in any event, that issue does not arise as one of the issues fell for consideration in the writ petition.

9. In the light of the above, we allow the writ appeal in part. Vacate the observations made by the learned Single Bench and for the reasons assigned by us in the preceding paragraph, we modified the punishment imposed on the respondent to that of stoppage of one increment for one year without cumulative effect instead of with cumulative effect. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

RM

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.

W.A. [MD]No.587 of 2021

17.06.2021

—
KK(29.06.2021) 3P 1C

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