



WEB COPY

W.P.(MD)No.186 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 04.01.2022
CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.186 of 2012

and

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

The Managemnet,
Tamilnadu State Transport Corporation,
(Madurai) Limited,
Tirunelveli Region,
Tirunelveli.

... Petitioner

VS

1. The Presiding Officer,
Labour Court,
Tirunelveli.

2. A.Simson Rethina Samy

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records on the file of the first respondent pertaining to its proceedings in I.D.No.22 of 2009, dated 08.04.2011 and quash the same.

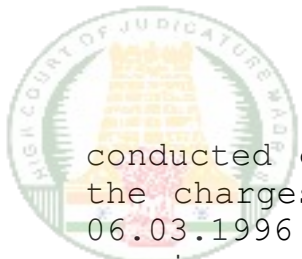
For Petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.K.R.Laxman for R2

O R D E R

The Management has filed this writ petition against the award passed in I.D.No.22 of 2009, dated 08.04.2011.

2. The breif facts of the case are that the second respondent was appointed as Driver on 18.08.1988. On 12.01.1996, while he was proceeding from Palayamkottai to Seranmahadevi near Muneerpallam railway gate, the bus met with an accident by hitting a lorry which was going in front of the bus. An enquiry was conducted by the senior driver and it was revealed that the accident was occurred due to the drunken driving of the second respondent. On the basis of the report, the second respondent was placed under suspension on 12.01.1996 and an enquiry was ordered, vide order, dated 12.01.1996. On 19.01.1996 a show cause notice was issued with Charge Memo and the second respondent submitted an explanation on 27.01.1996. Since, the same was not satisfactory, a full-fledged enquiry was



conducted on 09.02.1996. In the enquiry report, dated 15.02.1996, the charges were held proved. The second show cause notice, dated 06.03.1996 was issued proposing the punishment of dismissal from service. The delinquent did not submit any explanation and the enquiry report was accepted considering the previous records and the Management has passed an order to stop the increment for six years with cumulative effect. The delinquent did not prefer any appeal before the Managing Director within a period of 60 days. After the lapse of seven years, the delinquent has preferred an Industrial dispute in I.D.No.22 of 2009 and the Labour Court has set aside the punishment order. Aggrieved over the same the Management has preferred this writ petition.

3. The second respondent has filed a counter affidavit substantiating the order passed by the Labour Court. Since the second respondent was imposed the punishment without taking the medical evidence, the same is not sustainable.

4. Heard Mr.S.C.Herold Singh, learned Counsel appearing for the petitioner and Mr.K.R.Laxman, learned Counsel appearing for the second respondent.

5. The respondent relied on Divisional Bench judgment rendered in C.M.A.(MD)No.614 of 2020, dated 31.03.2021, wherein, it is stated that in the Post-mortem/Autopsy report no mention about presence of alcohol. When the Accident Register had mentioned about drunken driving, a chemical analysis for the content of alcohol should have been done. Having failed to prove that the accident occurred due to the drunken driving of the deceased, contributory negligence cannot be attributed to the deceased. In the present case admittedly the second respondent has committed an accident and when the Enquiry Officer visited the spot, the petitioner could not wake up and was sleeping. The Inspecting Officer has come to the conclusion that the second respondent was drunk. This may be a *prima facie* evidence, but it has to be substantiated by taking him to some hospital and ought to have analyzed whether he was drunken. The petitioner Management has not done the same.

6. Therefore, this Court is of the considered opinion that the Labour Court is right in stating that the Management has not substantiated the allegation because of the drunken driving, the second respondent has committed an accident. However, the facts remains that there was an accident and the second respondent could not wake up when the spot inspection was carried out. Either it may be due to accident or it may be due to drunken driving of the second respondent. Therefore, to meet the ends of justice, this Court is of the considered opinion that the punishment of six years of stoppage of increment with cumulative effect may be too harsh and the same ought to be reduced to one year. Therefore this Court is



modifying the punishment from stoppage of increment for six years with cumulative effect as punishment of stoppage of increment for one year without cumulative effect.

7. With the above direction, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

jbr

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 Presiding Officer,
Labour Court,
Tirunelveli.
2. The Managemnet,
Tamilnadu State Transport Corporation,
(Madurai) Limited,
Tirunelveli Region,
Tirunelveli.

Copy to:

The Section Officer,V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.R.LAXMAN, Advocate (SR-440[F] dated 05/01/2022)

+1 CC to M/s.S.C.HEROLD SINGH,Advocate (SR-533[F] dated
06/01/2022)

W. P. (MD) No.186 of 2012

04.01.2022