



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 04.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

W.P(MD)No.6480 of 2020

K.Sivaraju

... Petitioner

Vs

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

2.The General Manager,
Tamil Nadu Transport Corporation (Madurai) Ltd,
Dindigul Region,
Dindigul -4.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records connected with the impugned order passed by the first respondent in Ref No.LD4VD/317, dated 29.11.2019, quash the same and consequently direct the respondents to drop the punishment of increment cut for eighteen months in full based on the action dropped report dated 26.05.2013 submitted by the Masarpatty Police Station before the Judicial Magistrate, Vilathikulam and also in the light of the judgment of this Court reported in 2018(4) LLN 530 (Mad) along with cost of Rs.10,000/- for compelling the petitioner to file this writ petition for dropping the punishment.

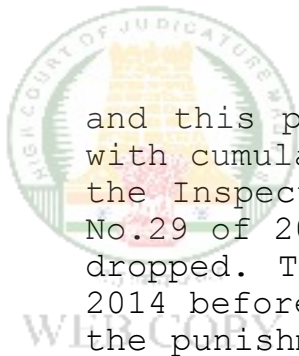
For Petitioner : Mr.S.Govindan

For Respondents : Mr.J.Senthil Kumaraiah

ORDER

This writ petition has been filed as against the order of punishment dated 29.11.2019. The first respondent vide impugned order has imposed punishment of increment cut with cumulative effect.

2.The learned Counsel for the petitioner submits that the petitioner is working as a conductor in the respondent corporation. While he was on duty on 25.04.2013 in the bus bearing Registration No.TN 57/N-2001 plying from Dindigul to Thiruchendur, an elderly woman tried to alight from the said bus, slipped and fell down, sustained injury and subsequently died in the hospital. For this incident, departmental proceedings were initiated in the year 2013



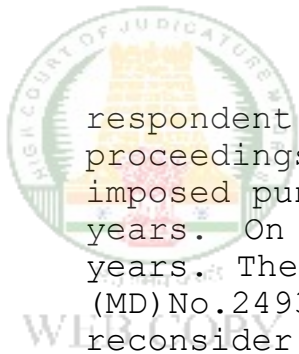
and this petitioner was imposed with a punishment of increment cut with cumulative effect for two years on 27.11.2014. In the meantime, the Inspector of Police, Masarpatty, who registered a case in Crime No.29 of 2013 for the said incident, has referred the case as action dropped. Therefore, the petitioner preferred an appeal in the year 2014 before the first respondent the Managing Director, who modified the punishment to two years increment cut with cumulative effect on 31.05.2017. Not satisfied with the same, the petitioner had preferred a writ petition before this Court in W.P(MD)No.24931 of 2018, wherein this Court by order dated 23.04.2019 directed the respondents to consider the case of the petitioner as per the terms and conditions of Settlement under Section 12(3) of the ID Act. In pursuance of the directions, an order reducing the punishment of increment cut with cumulative effect for eighteen months from two years of increment cut with cumulative effect has been passed. Aggrieved over the same, the present writ petition is filed.

3.The learned Counsel for the petitioner further by referring clause 61 of the settlement under Section 12(3) of the ID Act submits that if the departmental proceedings are initiated based on a criminal case and if the criminal case ends in acquittal or is dropped by the Police concerned, disciplinary authority may revise the punishment. The petitioner is working as a conductor and he is not responsible for the incident. However, charges have been framed as against the petitioner and punishment was also imposed. The Police, who registered a case, referred the case as action dropped. Even then the respondents have not dropped the punishment, instead, they have reduced the punishment. The petitioner has also approached this Court. This Court by order dated 23.04.2019 directed the respondents to reconsider the case of the petitioner in the light of 12(3) settlement and finally the punishment was slightly reduced from two years increment cut to eighteen months increment cut with cumulative effect and therefore, the petitioner is before this Court.

4.Learned Standing Counsel appearing for the respondent corporation submits that clause 61 of the Settlement under Section 12(3) of the ID Act is not applicable to the petitioner, who is working as a conductor. Further the language used in the 12(3) settlement is 'may', therefore, the discretion is vested with the disciplinary authority, who has taken a right decision and imposed a punishment.

5.This Court paid its anxious consideration to the rival submissions and perused the materials placed on record.

6.The petitioner, who is working as a Conductor has been held responsible by the disciplinary authority for the action of passenger in alighting from the moving bus, who sustained injury and died later. The Police registered a case for this incident and after



respondent Corporation has proceeded with the departmental proceedings, found this petitioner responsible for the incident and imposed punishment of increment cut with cumulative effect for three years. On appeal, the said punishment has been modified to two years. The petitioner has already challenged the punishment in W.P (MD)No.24931 of 2018, wherein this Court directed the respondents to reconsider the order of punishment as per clause 61 of 12(3) settlement of the ID Act. Accordingly, the punishment was revised by the respondents for increment cut with cumulative effect for eighteen months.

7.In similar such circumstances, a Division Bench of this Court in **the Managing Director, Tamil Nadu State Transport Corporation, Madurai Vs M.Sathyaseelan [W.A(MD)No.587 of 2021, dated 17.06.2021]** held as follows:

"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 honourable acquittal. The learned Single Bench has placed the closure of the criminal case as mistake of fact to be better than a case of honourable 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."

8.In the above case, a Division Bench of this Court has modified the punishment of 'increment cut with cumulative effect' to



'increment cut without cumulative effect'.

9.In the case on hand, charges have been framed as against this petitioner based on the criminal case registered against the petitioner in Crime No.29 of 2013, on the file of the Masarpatti Police Station, which has been closed by referring as action dropped. However, finally the petitioner is imposed with a punishment of increment cut with cumulative effect for eighteen months.

10.Considering the facts and circumstances of the case and also in view of the above said decision, this Court modifies the punishment imposed on the petitioner from 'increment cut for eighteen months with cumulative effect' to 'increment cut for eighteen months without cumulative effect'.

11.The writ petition is disposed of on the above terms. No costs.

Sd/-

Assistant Registrar(Writs)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

dsk

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

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Madurai - 16.

2.The General Manager,
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Dindigul Region,Dindigul -4.

W.P(MD)No.6480 of 2020
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SB(CO)

TR(16.03.2022) 4P 3C