



W.P.(MD).No.22134 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.22134 of 2015

and

M.P.(MD).No.1 of 2015

Moovendran

... Petitioner

Vs.

1.The Management of
Tamil Nadu State Transport
Corporation (Madurai) Limited,
Madurai Division,
Represented by its Managing Director,
Madurai.

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

3.The Assistant Manager (Legal),
Tamil Nadu State Transport
Corporation (Madurai) Limited,
Dindigul Region,
Dindigul.

... Respondents



W.P.(MD).No.22134 of 2015

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the first respondent in his proceedings in Reference:Sattam/W.P.(MD).No.15816 of 2014 dated 29.09.2015 and confirming the order of the second respondent proceedings in Ref.Sathu.A7/2672 dated 20.10.2012 and quash the same as illegal and consequently to direct the respondents to pass appropriate order for the increment to the petitioner.

For Petitioner : Mr.V.P.Rajan

For Respondents : Mr.J.Senthil Kumaraiah

ORDER

This Writ Petition has been filed to quash the impugned order passed by the first respondent dated 29.09.2015 thereby confirming the order of the second respondent dated 20.10.2012 and consequently direct the respondents to pass appropriate order for the increment to the petitioner.

2. The brief facts as stated in the affidavit are that the petitioner was working as Driver in the respondent Corporation from the year 1999 onwards. On 19.03.2012 at about 1.35 p.m. near Mangayarkarasi Mill, Puliyankulam Madurai, the petitioner while driving the bus, a speedy two wheeler rider



W.P.(MD).No.22134 of 2015

overtook a lorry, noting the rash and negligence of the two wheeler rider, the petitioner took extreme left on the road to pave way to the two wheeler. Despite the petitioner took extreme left, the speedy two wheeler driver dashed on the right side of the bus and lost his lives in the accident on the spot. However, the victim's daughter sustained injury and admitted in the Hospital. A criminal case was registered in Crime No.80 of 2012. In the meanwhile, the petitioner was suspended from service vide order dated 26.03.2012 and the charges were framed against the petitioner alleging that the petitioner drove the bus in rash and negligent manner causing fatal accident and causing damage to the bus and two wheeler. The Inspector of Police, Silaiman Police Station after thorough investigation, filed a final report before the Judicial Magistrate II, Madurai stating that the victim alone drove the two wheeler in rash and negligent way and the petitioner has not committed any offence and the case was recorded as mistake of fact and the action was dropped. In the meanwhile, the petitioner submitted explanation to the charge memo. However, not satisfied with the explanation, the enquiry officer has concluded the enquiry and held the petitioner is guilty. Thereafter, the second respondent accepting the report, imposed a punishment of stoppage of increment for a period of two years with cumulative effect vide proceedings dated 20.10.2012. Aggrieved by



W.P.(MD).No.22134 of 2015

the order, the petitioner preferred an appeal before the first respondent. Since the first respondent did not consider the appeal, the petitioner was constrained to file W.P.(MD).No.15816 of 2014, wherein, this Court vide order dated 23.09.2014 directed the first respondent to dispose the appeal within a stipulated time. The first respondent without considering the appeal, confirmed the punishment. The contention of the petitioner is that the punishment order is not in conformity with law, on account of the fact that the criminal case registered against the petitioner was referred as mistake of fact. The petitioner's further contention is that in the motor accident claim filed by the legal heirs of the victim in M.C.O.P.No.2056 of 2012 and 2057 of 2012 on the file of VI Additional District Court, Madurai, the respondents took a plea that the petitioner has not driven the vehicle in rash and negligent way. Since the respondents themselves are taking such plea, the contention of the petitioner is that the petitioner was not responsible for the accident and the respondents cannot imposed punishment by holding that the petitioner is guilty of the charges.

3. The respondents have filed counter stating that in the domestic enquiry, the enquiry officer after hearing the witnesses, which was produced by



W.P.(MD).No.22134 of 2015

the petitioner has come to the conclusion that the petitioner is guilty of rash and negligent driving. Therefore, based on the report, the present punishment was imposed. The petitioner ought to have approached the Labour Court. Instead of filing the petition before the Labour Court, the petitioner has filed this Writ Petition. Since the petitioner is having an alternative remedy and hence this Writ Petition is liable to be dismissed. The learned counsel for the respondents submitted that the spot inspection report would clearly indicate that the petitioner was negligent in driving, therefore, the respondents prayed to dismiss the Writ Petition.

4. Heard Mr.V.P.Rajan, learned counsel for the petitioner and Mr.J.Senthil Kumaraiah, learned counsel appearing for the respondents and perused the records.

5. The first contention of the petitioner is that the criminal case has ended up as mistake of fact and the action was dropped and hence the respondents ought to have dropped the domestic enquiry proceedings also. Consequently, the respondents ought not to have imposed the punishment. In criminal case, strict evidence is necessary and for disciplinary enquiry the principle of



W.P.(MD).No.22134 of 2015

preponderance of probability is followed. Therefore, this Court is of the considered opinion that the dropping of criminal case cannot be a criteria for dropping of disciplinary enquiry. Therefore, the report submitted before the Criminal Court cannot be taken into account.

6. The next contention raised by the petitioner is that in the Motor Accident Claim Tribunal, the Tribunal has failed to give a finding whether the petitioner is at negligence or the victim is at negligence. The petitioner is taking advantage of such order passed by M.C.O.P tribunal.

7. The spot inspection report has produced before this Court. On perusing the spot inspection report, it has been stated that it is the mistake of both the petitioner as well as the victim. The spot inspection report fixes the negligence on both the petitioner and the victim. The contention of the petitioner is that he has taken the bus to the extreme left, inspite of the same, the victim has hit the bus and died on the spot. On perusing the sketch that was produced before this Court, the bus was standing on the extreme left and the victim was before the bus. This would indicate that the petitioner has not committed fault.



W.P.(MD).No.22134 of 2015

8. Therefore, this Court is of the considered opinion that the respondents have not considered the evidence in an appropriate manner and therefore, the petitioner is in advantageous position. Therefore, this Court set aside the impugned order. The respondents are directed to confer the consequential benefits to the petitioner including increment and promotion and the said exercise shall be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order.

9. With the above direction, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

26.09.2022

Index : Yes / No
Internet : Yes/ No
Nsr



WEB COPY



W.P.(MD).No.22134 of 2015

S.SRIMATHY, J.

Nsr

To

- 1.The Managing Director,
The Management of
Tamil Nadu State Transport
Corporation (Madurai) Limited,
Madurai Division, Madurai.
- 2.The General Manager,
Tamil Nadu State Transport
Corporation (Madurai) Limited,
Dindigul Region, Dindigul.
- 3.The Assistant Manager (Legal),
Tamil Nadu State Transport
Corporation (Madurai) Limited,
Dindigul Region, Dindigul.

W.P.(MD).No.22134 of 2015

26.09.2022