



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P. (MD)No.7162 of 2016

and

W.M.P. (MD)Nos.6064 and 6065 of 2016

WEB COPY

K.Ramesh

... Petitioner

vs.

1.The Tamilnadu State Transport Corporation
(Kumbakonam) Limited,
Kumbakonam Division,
represented by its Managing Director,
Kumbakonam, Thanjavur District.

2.The Tamilnadu State Transport Corporation
(Kumbakonam) Limited,
Tiruchirappalli Region,
represented by its General Manager,
Periyamelaguparai, Tiruchirappalli - 620 001.

3.The Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Tiruchirappalli Rural Branch,
represented by its Branch Manager,
Tiruchirappalli - 620 001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for records of the impugned order of the 2nd respondent in no.TNSTC/KUM/TRICHY/D6/5266/2014, dated 30.12.2015 and to quash the same and pleased to direct the 2nd respondent to give all consequential benefits to the petitioner.

For Petitioner : Mr.R.S.Sivaram

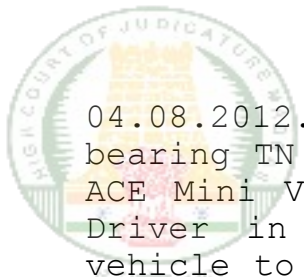
For Respondents : Mr.D.Sivaraman

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order of the 2nd respondent in No. TNSTC / KUM / TRICHY/D6/5266/2014, dated 30.12.2015 and pleased to direct the 2nd respondent to give all consequential benefits to the petitioner.

2.The brief facts of the case are that the petitioner was appointed as Driver on 15.06.2010 and was regularized from

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



04.08.2012. On 02.12.2014, when the petitioner was driving the Bus bearing TN 45 N 3709 from Trichy to Salem at about 09:45 AM, a TATA ACE Mini Van with Registration No.TN 28 AM 2797 was driven by the Driver in a rash and negligent manner and suddenly turned his vehicle to his right side to avoid a pothole in the road and due to the same he was unable to control his vehicle and ultimately he dashed the petitioner's bus, due to which the Driver and other passengers in TATA ACE sustained injuries in the accident. The glass and the tyer of the Bus were damaged and the petitioner also sustained injuries all over his body due to breaking of the glass. The petitioner was admitted in Government Hospital, Namakkal and thereafter, discharged from Hospital. FIR was registered in Crime No.347 of 2014 under Sections 279, 337, 338 and 304(A) of IPC. The petitioner was suspended on 02.12.2014 and a charge memo, dated 09.12.2014 was issued. The petitioner was made responsible for the death of two persons and was made responsible for the loss to the Bus to the tune of Rs.33,168/-.

3. The contention of the petitioner is that FIR was not mentioned in the charge memo, pending the disciplinary proceedings the petitioner's suspension was revoked and was allowed to join duty on 08.01.2015. For the charge memo, the petitioner submitted oral explanation and requested to withhold the disciplinary proceedings, until the disposal of the criminal proceedings. However, the respondents appointed an Enquiry Officer. The petitioner submitted a representation, dated 18.03.2015, to the Enquiry Officer to provide necessary documents. The Enquiry Officer directed the petitioner to attend the enquiry on 06.08.2015. Again, the petitioner requested to withhold the disciplinary proceedings until criminal case is disposed of. According to the petitioner, without considering his request, the Enquiry Officer concluded enquiry report and submitted it on 26.10.2015.

4.The contention of the petitioner is that the Enquiry Officer exceeded his power in coming to the conclusion with his findings. The enquiry was not as per Rules and it is in violation of principles of natural justice. There is no independent witness in the enquiry proceedings and all the witnesses are from the department. Based on the enquiry report, the disciplinary authority has passed an order imposing a punishment of stoppage of increment for three years with cumulative effect, vide order, dated 02.11.2015. For the said proposed punishment, the petitioner submitted another explanation, vide letter, dated 08.12.2015 and 08.01.2016. The contention of the petitioner is that, vide letters, the petitioner sought extension of time for giving reply, but the respondents did not pass any order either granting extension of time or rejecting the request. Therefore, the petitioner's contention is that there was deemed extension of time. The petitioner filed a Writ Petition in W.P.(MD)No.2630 of 2016. In the meanwhile, the respondents appeared before the Court and submitted that the final



submission, the said Writ Petition was disposed with a liberty to file a fresh Writ Petition.

6.The contention of the petitioner is that even though it was submitted by the respondents that the final orders are passed. The said order was not communicated to the petitioner. The petitioner sought information under Right to Information Act, vide letter, dated 07.03.2016. The respondents rejected the said letters but subsequently served copy of the order. The contention of the petitioner is that the entire process of the disciplinary proceedings initiated by the second respondent is *mala fide* and against the rule of law and natural justice. Since the criminal proceedings are pending before the Court, according to the petitioner, the disciplinary proceedings cannot be concluded against the evidence like the sketch and other materials, which are relevant to prove the negligence and rash driving of the petitioner. Since the same was not produced and the documents were not served to the petitioner, the disciplinary proceedings are vitiated and the punishment imposed is illegal.

7. The respondents relied on the written para wise remarks, where it has been stated that the writ petition is not maintainable. Moreover the accident spot was inspected and it was seen that the petitioner has crossed the meridian and has entered the right side of the meridian. Therefore, he had hit the TATA ACE Van. The petitioner was granted adequate opportunity. However, the petitioner was not inclined to attend the enquiry stating that since the criminal proceedings are pending, the respondents cannot proceed with the disciplinary proceedings. In the accident two persons died and the two persons have incurred injuries 2 MCOPs are pending before the Tribunal claiming Rs.15,00,000/- and Rs.17,00,000/- each.

8.Heard Mr.R.S.Sivaram, learned Counsel appearing for the petitioner and Mr.D.Sivaraman, learned Standing Counsel appearing for the respondents.

9.The contention of the petitioner is that he did not drive the Vehicle in a rash and negligent way. The TATA ACE in order to avoid a pothole in the road, crossed the meridian suddenly, which the petitioner/driver did not expect. Therefore, the accident occurred. According to the respondent, even if such a claim is accepted, the accident investigation report says even the Bus crossed the meridian. If that is so, both the Bus as well as the TATA ACE had crossed the meridian. Therefore, the accident had occurred. Even though there is no rash and negligent driving, the petitioner has violated the traffic rules by crossing the meridian instead of keeping on the left. The petitioner and the respondents agreed on one aspect that the TATA ACE in order to avoid the pothole, crossed the meridian but there is no such difficulty for the petitioner. Therefore, crossing the meridian on the road is negligent but not



10.The respondents raised an objection to entertain this Writ Petition, since the petitioner has filed this without availing the alternative remedy of filing this before the Labour Court. The respondents relied on two judgments of this Court where it has been stated that the employee ought to approach before the Labour Court and straight away he cannot file a Petition by invoking Article 226. The respondents also relied on a Full Bench decision of this Court on maintainability of the Writ Petitions, wherein, it has been stated that the circumstances under which Article 226 can be entertained. However, this Court has admitted this Writ Petition and has granted interim stay and subsequently, extended the interim stay. Since this Court has entertained the Writ Petition as early as 2016 and this case was pending for the past 7 years, at this stage if the peititioner is directed to approach the appropriate forum it will take another few years. In order to grant substantive justice this Court is inclined to entertain this Writ Petition. As far as the punishment is concerned, this Court is inclined to modify it. Since it has been held supra that there is no rash driving but there is some negligence on the part of the petitioner, the punishment of stoppage of increment for three years with cumulative effect is modified as stoppage of increment for one year without cumulative effect.

11.With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2022

Sub Assistant Registrar(CS)

Tmg

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,
The Tamilnadu State Transport Corporation
(Kumbakonam) Limited,
Kumbakonam Division,
Kumbakonam, Thanjavur District.

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



2.The General Manager,
The Tamilnadu State Transport Corporation
(Kumbakonam) Limited,
Tiruchirappalli Region,
Periyamelaguparai, Tiruchirappalli - 620 001.

3.The Branch Manager,
The Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Tiruchirappalli Rural Branch,
Tiruchirappalli - 620 001.

W.P. (MD)No.7162 of 2016
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