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W.P.No.25489 of 2009

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

|                      |          |                   |
|----------------------|----------|-------------------|
| <b>RESERVED ON</b>   | <b>:</b> | <b>31.01.2023</b> |
| <b>PRONOUNCED ON</b> | <b>:</b> | <b>21.02.2023</b> |

**CORAM:**  
**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

**W.P.No.25489 of 2009**

1) P.Munusamy (died)

2) Arputham

3) Shabina

4) M.Ashok

5) Asha

6)Usha

7) Divya

... Petitioners

*\* P2 to P7 substituted as Lr's of deceased sole petitioner vide order dated 05.07.2022 made in W.M.P.No.19843 of 2021.*

**Vs.**

1.The Management,  
Rep. By its Managing Director,  
Tamil Nadu State Transport Corporation,  
(Villupuram Division II) Limited,  
Rangpiram, Vellore 632 009

2. The Principal Labour Court,  
Vellore, Vellore District.

..Respondents



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**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus by calling for the records of the first respondent, dismissal order dated 25.11.2000 in Number 11834/S4/TNSTC Ltd./ 99 to quash the same and direct the 1<sup>st</sup> respondent to reinstate the petitioner with full back wages, continuity of service and all other consequential benefits by setting aside the dismissal award passed in I.D.No.165 of 2002 dated 13.07.2009 on the file of Principal Labour Court, Vellore.

For Petitioners : Mr.K.M.Ramesh,  
Senior Counsel  
for Mr.V.Subramani

For R-1 : Mrs.S.Pavithra

\* R2 - Court

\*\*\*\*\*

### **ORDER**

This Writ Petition has been filed seeking to quash the order passed by the first respondent/Management dated 25.11.2000, which was confirmed by the Labour Court, Vellore, I.D.No.165 of 2002 by Award dated 13.07.2009. The original petitioner further sought for a direction to the 1<sup>st</sup> respondent to reinstate him with full back wages, continuity of service and all other consequential benefits.

2. The petitioner-P.Munusamy died during the pendency of this writ



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petition and his legal heirs viz., petitioners 2 to 7 were brought on record.

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3. The petitioner was employed as Driver in the Respondent Corporation and he joined the service in 1981. While the petitioner was on duty on 21.04.1999, he hit against a cyclist and the cyclist died on the spot. In respect of the said occurrence, the respondent Corporation issued a charge memo, dated 17.05.1999 to the petitioner, seeking for explanation.

4. A domestic enquiry was conducted against the petitioner and he was issued with a show cause notice, dated 04.11.2000. The petitioner submitted his explanation to the said show cause notice.

5. The respondent Corporation, after considering the explanation submitted by the petitioner and the evidence available in the scene of occurrence and also considering the past track record, found that the explanation of the petitioner did not contain any supporting material to substantiate his stand that he was not guilty of the offence and thus, passed the punishment of 'dismissal from service' by proceedings dated 25.11.2000.



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6. Aggrieved by the said punishment of dismissal from service, the petitioner raised an industrial dispute before the Labour Officer, Vellore, who had issued conciliation failure report. Based upon that report, the petitioner filed I.D.No.165 of 2002 under Section 2A(2) of the I.D.Act 1947 before the Labour Court, Vellore which also came to be dismissed by an order dated 13.07.2009.

7. The main contention of the learned counsel for the petitioner is that the domestic enquiry which was conducted was not a free and fair one and the same was against the principles of natural justice. He further contended that the petitioner was not offered sufficient opportunities to defend his case nor was he provided with the list of witness and documents prior to the conduct of enquiry. Therefore, the findings rendered by the Enquiry Officer, holding that the charges as proved, is absolutely perverse. He also stated that the explanation submitted by the petitioner for the charge memo was not considered and the order of punishment dated 25.11.2000 came to be passed, which is illegal. The learned counsel in support of his submissions relied on the following decisions:-

(1) *Jeeva Transport Corporation Ltd Vs. Industrial*



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***Tribunal and another*** [1993(1) CLR 942 : 1994(2) LLJ

350; and

***(2) Management of Jeeva Transport Corporation,***

***Erode Vs. Presiding Officer, Industrial Tribunal and***

***another*** [2002 (sup4) LLJ 245.

8. Per contra, the learned counsel appearing for the first respondent would submit that a criminal case was registered against the petitioner under Sections 279 and 304-A of I.P.C. The petitioner drove the bus in a rash and extremely dangerous manner, killing an innocent by-passer. The past record of the petitioner includes two fatal accidents and 11 other offences. Since the petitioner was guilty of negligence which is against the Standing Orders of the Corporation, the respondent Corporation has removed him from service. The petitioner failed to establish the fact that he was innocent by way of producing eye witness to that effect.

9. Heard both sides and perused the materials placed before this Court.

10. A perusal of the entire records made available to this Court would go



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to prove that the criminal cases instituted against the deceased for offence u/s.304A IPC was taken up in C.C.No.165 of 1999 on the file of Judicial Magistrate, Arani, Thiruvannamalai District. After full-fledged trial, the learned Judge, by judgment dated 03.02.2004 acquitted the accused/petitioner.

**11.** That apart, it is noticed that in the enquiry held in the departmental proceedings, the Checking Inspector who was examined on the side of the respondent Corporation, stated in his evidence that he went to the accident spot one hour after the incident and enquired and concluded that the fault was on the part of the petitioner. The conductor of the bus was not examined in the enquiry. The request made by the petitioner to examine the eye witnesses was rejected by the Enquiry Officer. Therefore, it is very clear that the Enquiry Officer accepted the hearsay evidence of the sole witness examined on the side of the respondent Corporation and given his findings, which cannot be said to be correct.

**12.** Even though the respondent Corporation narrated about the past record and the incidents taken place, it is to be noted that in respect of two fatal accidents, the criminal Court had acquitted the petitioner.



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13. The Labour Court, while confirming the dismissal order passed by the Corporation, has not appreciated the fact that there is no legal evidence in support of the charges in the enquiry and the only evidence based upon which, the petitioner has been charged, was only a hearsay evidence. As held by this Court in the decision reported in **1994 (2) LLJ 350 [Jeeva Transport Corporation Vs. Industrial Tribunal and another]**, the conductor of the bus, who was a person at the spot of the accident, who can give direct evidence as to how accident happened, was not examined as a witness. Instead, the respondent Corporation, relied on only one evidence who is a hearsay evidence and was not an eyewitness. As held by M.Srinivasan, J., as he then was, the conclusion arrived at based on the findings of the domestic enquiry officer is perverse.

14. In the case of **Management of Jeeva Transport Corporation, Erode, Vs. Presiding Officer, Industrial Tribunal and another**, this Court by decision dated **02.08.2001**, held that the non-examination of the conductor of the bus and eyewitness of the occurrence would vitiate the enquiry. The learned Judge held that there is no reason why the conductor was not examined as a witness on the side of the management. The learned Judge, thus held that



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the Enquiry Officer's report was vitiated by perversity.

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**15.** It is no doubt true that in the present case, the Enquiry Officer, based on the hearsay evidence alone, gave his report and held that the charges are proved. Following the above cited Rulings, it can be concluded that the findings of the domestic enquiry officer is perverse. Therefore, the findings of the Labour Court and the conclusion arrived at based on the report of the Enquiry Officer warrants interference by this Court. Accordingly, the impugned award dated 13.07.2009 passed in I.D.No.165 of 2002 is set aside. Consequently, the order of dismissal passed by the respondent Corporation is also quashed.

**16.** Since the writ petitioner died and his legal heirs are brought on record, the respondent Corporation is directed to pay the arrears of backwages and all other terminal benefits entitled to the petitioners within a period of 6 months from the date of receipt of a copy of this order. Accordingly, the writ petition is allowed on the above terms. No costs.

**21.02.2023**



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Index: Yes/No

Speaking/Non-speaking order

nvsri/sts

To:

The Presiding Officer,  
I Additional Labour Court,  
High Court Compound,  
Chennai 600 104



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**J.NISHA BANU, J.,**

sts

Order made in  
**W.P.No.25489 of 2009**

Dated:  
**21.02.2023**