



W.P.(MD).No.8472 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.02.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.8472 of 2019

and

W.M.P(MD)No.6634 of 2019

N.Kani, SL.G

... Petitioner

Vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation
(Madurai) Ltd.,
Bye Pass Road,
Madurai – 625 016.

2.The General Manager,
Tamil Nadu State Transport Corporation
(Madurai) Ltd.,
Dindigul Region,
Bye Pass Road, Collector Office,
Dindigal – 624 004.

... Respondents

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 1st respondent in பார்வை: சது.எல். 1 W.P/2076/2018 dated 02.01.2019 and to quash the same and



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consequently to direct the respondent to drop the punishment of increment cut and to direct the respondents to refund the amount already recovered from the petitioner's pay from the month of July 2018.

For Petitioner : Mr.M.Pounraj

For Respondents : Mr.J.Senthil Kumariah
Standing Counselling

ORDER

This writ petition has been filed challenging the impugned order, dated 02.01.2019 with a consequential relief to drop the punishment of increment cut and direct the respondents to refund the recovered amount.

2. The petitioner is working in the respondent transport corporation. The petitioner was imposed with punishment of reduction of increment by 5 stages retrospectively with cumulative effect on 02.01.2019. The petitioner was appointed in the respondent corporation as Driver on 16.06.1997. While he was on a trip on 24.11.2002, he met with an accident. Hence, F.I.R was registered in Crime No.278 of 2002 under Sections 279, 337 and 304 (A) IPC. The



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respondents have initiated disciplinary proceedings by issuing show cause notice, dated 24.11.2002. After submitting detailed explanation, a domestic enquiry was conducted and charges were held proved. Thereafter, the petitioner was imposed with punishment. In the criminal case, the petitioner was acquitted from all charges vide judgment, dated 11.08.2010. In the criminal case, it has been specifically held that the petitioner is not responsible for the alleged accident.

3. The issue of considering the punishment imposed in the domestic enquiry, if it is an accident case and the acquittal in the criminal case, was considered by this Court in W.P(MD)Nos.15290 of 2008 & 8456 of 2019, dated 05.01.2023. This Court has relied on a judgment rendered by the Hon'ble Division Bench in W.A(MD)No.587 of 2021, wherein the Division Bench has held as under:

“5. In our considered view, the learned writ Court was not right in interfering with the exercise of discretion by the first appellant authority, especially, when such exercise of discretion was on account of an agreement between the Employees Union and the Management.



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6.Furthermore, 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 of Hon’ble acquittal. The learned Single Bench has placed the closure of the criminal case as mistake of fact to be better than a case of Hon’ble 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.

9.In the light of the above, we allow the writ appeal in part. Vacate the observations made by the learned Single Bench and for the reasons assigned by us in the preceding paragraph, we modified the punishment imposed on the respondent to that of stoppage of one increment for one year without cumulative effect instead of with cumulative effect. No costs. Consequently,



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connected miscellaneous petition is closed.”

4. In the present case, the respondents have imposed punishment of reduction in increment cut by 5 stages retrospectively. Therefore, this Court is inclined to interfere with the punishment based on the judgment rendered in W.A(MD)No.587 of 2021. Therefore, the punishment of reduction in 5 stages is modified as stoppage of increment for two (2) years without cumulative effect.

5. With this direction, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

02.02.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No

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To

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