



W.P.(MD).Nos.15290 of 2018 and 8456 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 05.01.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.15290 of 2018 and 8456 of 2019

W.P.(MD).No.15290 of 2018:

M.Sathiyaseelan

... Petitioner

Vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation (Madurai) Limited,
Byepass Road, Madurai – 16.

2.The General Manager,
Tamil Nadu State Transport Corporation (Madurai) Limited,
Dindigul Region,
Dindigul – 4.

... 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 connected with the impugned order passed by the first respondent in Parvai:LD1VD/434 dated 21.12.2021 and quash the same and consequently direct the respondents to drop the punishment of 4 years Increment cut with cumulative effect, recovery of Rs.400/- towards damages for the Bus on the



W.P.(MD).Nos.15290 of 2018 and 8456 of 2019

date of accident on 20.05.2014 and for adjusting 30 days suspension period from the petitioner's own leave imposed by the second respondent in terms of Clause 61 of 12(3) settlement dated 30.09.1992 and in view of the Judgment of the Chief Judicial Magistrate, Theni dated 25.05.2015.

(Prayer amended vide Court Order dated 06.01.2022 in W.M.P.(MD).No.173 of 2022 in W.P.(MD).No.15290 of 2018)

For Petitioner : Mr.S.Govindan

For Respondents : Mr.M.Prakash,
for Mr.A.Jeyaram,
Standing Counsel.

W.P.(MD).No.8456 of 2019:

R.Ramakrishnan

... Petitioner

Vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation (Madurai) Limited,
Byepass Road, Madurai – 16.

2.The General Manager,
Tamil Nadu State Transport Corporation (Madurai) Limited,
Dindigul Region,
Dindigul – 4.

... Respondents



W.P.(MD).Nos.15290 of 2018 and 8456 of 2019

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to revise and drop the punishment of 18 months increment cut with cumulative effect and also to pay the wages for the suspension period from 20.12.2011 to 18.01.2012 for 30 days passed by the second respondent dated 04.02.2013 in terms of Clause 61 of 12(3) Settlement dated 30.09.1992 and in view of the Judgment of the District Munsif cum Judicial Magistrate Court, Andipatty in C.C.No.80 of 2012 dated 10.08.2017.

For Petitioner : Mr.S.Govindan

For Respondents : Mr.J.Senthil Kumaraiah,
Standing Counsel.

COMMON ORDER

The Writ Petition in W.P.(MD).No.8456 of 2019 is filed for Writ of Mandamus to revise the punishment based on the acquittal in criminal case and the Writ Petition in W.P.(MD).No.15290 of 2018 is filed to quash the order dated 21.12.2021 with a consequential relief to drop the punishment in terms of Clause 61 of 12(3) settlement dated 30.09.1992 and in view of the Judgment of the Chief Judicial Magistrate, Theni dated 25.05.2015.



W.P.(MD).Nos.15290 of 2018 and 8456 of 2019

WEB COPY

2. The petitioner in W.P.(MD).No. 8456 of 2019 was working as a Driver in the respondent Corporation. On 15.12.2011 when the petitioner was serving as a Driver, a passenger who was travelled in a foot board had slipped over, fell and died. A charge memo dated 27.12.2011 was issued. After enquiry, the petitioner was imposed with a punishment of cut in the increment for 18 months with cumulative effect vide order dated 04.02.2013. In the meantime, a criminal case was initiated in C.C.No.80 of 2012 and the petitioner was acquitted vide judgment dated 10.08.2017, wherein it is stated that the charges were not proved beyond doubt.

3. Similarly, in W.P.(MD).No.15290 of 2018, the petitioner is a Driver in the respondent Corporation and the accident has occurred due to the rash and negligent driving of the two wheeler rider and it is not due to the negligent of the driver of the bus. In such circumstances, the petitioner cannot be fastened liability. However, a charge memo was issued and the petitioner submitted his detailed explanation. In the meantime, a criminal case was registered in C.C.No.25 of 2015 and the Criminal Court vide order dated 25.05.2015



W.P.(MD).Nos.15290 of 2018 and 8456 of 2019

acquitted the petitioner from charges since the charges were not proved beyond doubt. Based on the findings of the enquiry officer, the second respondent had imposed a punishment of increment cut for 4 years with cumulative effect and had also sought for recovery of Rs.400/- for the damages in the Bus and had adjusted the 30 days suspension period in the petitioner's eligible leave. Aggrieved over the same, both the Writ Petitions are filed.

4. The contention of the petitioners is that whenever a criminal case was initiated and ended up in acquittal, the employees and the respondent Board ought to review the punishment. Since the claim was repeatedly raised by the employees, the respondents entered into 12(3) settlement dated 30.09.1992. Under clause 61 of the Settlement under Section 12(3) of I.D. Act, between the employer and employees, the following has been provided:

“Disciplinary Action in Accident Cases

“61. Where a Driver involved in an accident and held guilty of charge in domestic enquiry, subsequently honourably acquitted in the criminal case, the decision in the disciplinary case on the same charge may be revised based on the orders of the Court. However, if the acquittal is by benefit of doubt, no such revision is necessary”.



W.P.(MD).Nos.15290 of 2018 and 8456 of 2019

5. The 12(3) settlement states that whenever a criminal case is ended up in Hon'ble Acquittal, then the decision in the disciplinary proceedings will be revised. However, if the acquittal is by the benefit of doubt, no such revision is necessary. In the present case both the petitioners were acquitted based on benefit of doubt and hence the respondents have imposed punishment of cut on increment with cumulative effect. Aggrieved over the same, the writ petitions are filed.

6. Heard Mr.S.Govindan, learned counsel for the petitioners, Mr.M.Prakash and Mr.J.Senthil Kumaraiah, learned Standing Counsels appearing for the respondents and perused the records.

7. The said clause in the 12(3) settlement declining to consider the acquittal on benefit of doubt was considered by the Hon'ble Division Bench in W.A.(MD).No.587 of 2021 vide order dated 17.06.2021, wherein the Hon'ble has partly allowed the appeal. The said writ appeal is filed against the order dated 03.03.2020 passed in W.P.(MD)No.4499 of 2020, wherein the Learned Single Judge had held as under:



WEB COPY

8. *The above decision is squarely applicable to this case. Moreover, in this case, it is seen that the charges have been framed against the petitioner only for causing the accident and for causing loss to the Corporation by his negligence act. There cannot be any dispute that no one has an intention to invite an accident voluntarily and no one willing to be a cause for an accident. Most of the accidents are being happened in a sudden moment by negligence of one party or both. In this case, the criminal complaint itself has been closed as there is no negligence/fault on the part of the petitioner. Hence, the punishment imposed by the respondents holding that he has committed the act of negligence/default without any evidence or without assigning any reason, are liable to be set aside.*

Against this order, the Management Corporation had preferred an appeal in W.A.(MD).No.587 of 2021 and the Hon'ble Division Bench had 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.*

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*



W.P.(MD).Nos.15290 of 2018 and 8456 of 2019

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, connected miscellaneous petition is closed.



W.P.(MD).Nos.15290 of 2018 and 8456 of 2019

The Hon'ble Division Bench has held that the authorities had exercised their discretionary power and imposed the punishment, hence the same is legally sustainable. However, since the punishment would affect their pensionary benefits, the Hon'ble Division Bench has reduced the punishment.

8. On perusing the charges, it is seen that the accident in W.P.(MD).No. 8456 of 2019 is occurred due to the passenger who travelled in the foot board. The deceased must be aware that foot board travel will result in accident and the negligent ought to be fixed on the deceased traveller also. Similarly, in W.P.(MD).No.15290 of 2018, the accident had occurred due to negligence driving of the two wheeler rider as well. Therefore, this Court following the order passed by the Hon'ble Division Bench has reduced the punishment alone.

9. Therefore, this Court inclined to interfere with the punishment in W.P.(MD).No.8456 of 2019 and the impugned order dated 21.12.2021 is modified and the punishment of cut in increment for 18 months with cumulative effect is modified as cut in increment for one year without cumulative effect.



W.P.(MD).Nos.15290 of 2018 and 8456 of 2019

WEB COPY

10. Similarly, in W.P.(MD).No.15290 of 2018, the punishment of 4 years increment cut with cumulative effect is modified as 2 years increment cut without cumulative effect.

11. With the above direction, both the Writ Petitions are disposed of.
There shall be no order as to costs.

05.01.2023

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

To

1.The Managing Director,
Tamil Nadu State Transport Corporation (Madurai) Limited,
Byepass Road, Madurai – 16.

2.The General Manager,
Tamil Nadu State Transport Corporation (Madurai) Limited,
Dindigul Region,
Dindigul – 4.

10/11



WEB COPY



W.P.(MD).Nos.15290 of 2018 and 8456 of 2019

S.SRIMATHY, J.

Nsr

W.P.(MD).Nos.15290 of 2018 and 8456 of 2019

05.01.2023