



W.P.(MD)No.16603 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:08.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.16603 of 2018

K.S.Kamatchi

... Petitioner

Vs.

**1.The Managing Director,
Tamilnadu State Transport Corporation(Madurai) Ltd.,
Byepass Road, Madurai – 16.**

**2.The General Manager,
Tamilnadu State Transport Corporation (Madurai) Ltd.,
Dindigul Region, Dindigul – 4.**

... Respondents

Prayer:Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records connected with the impugned order passed by the first respondent in Parvai:Koo Saa-Dindu/WP/2177/2017 dated 28.03.2017 and quash the same and consequently to direct the respondents to revise and drop the punishment of one year increment cut without cumulative effect, for refund of Rs.8133/- towards increment cut recovered from the terminal benefits on 21.01.2017 and for cancellation of four days suspension from 06.10.2012 to 09.10.2022 and to grant all monetary and service benefits in terms of Clause 23 of the 12(3) settlement dated 28.09.1995 and the



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report of mistake of fact dated 17.12.2012 submitted by the Sub-Inspector of Police, Theni before the Judicial Magistrate, Theni.

For Petitioner : Mr.S.Govindan
Respondents : Mr.J.Senthil Kumaraiah

ORDER

This writ petition has been filed to quash the impugned order passed by the first respondent in Parvai:Koo Saa-Dindu/WP/2177/2017 dated 28.03.2017 and consequently, to direct the respondents to revise and drop the punishment of one year increment cut without cumulative effect, for refund of Rs.8133/- towards increment cut recovered from the terminal benefits on 21.01.2017 and for cancellation of four days suspension from 06.10.2012 to 09.10.2022 and to grant all monetary and service benefits in terms of Clause 23 of the 12(3) settlement dated 28.09.1995 and the report of mistake of fact, dated 17.12.2012, submitted by the Sub-Inspector of Police, Theni before the Judicial Magistrate, Theni.

2. The case of the petitioner is that the petitioner was appointed as Driver on 01.12.1994 and retired from service on 30.06.2013. While he



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was on duty on 04.10.2012, when reversing the bus bearing Registration No.TN 57 N 1729, at about 2.30 p.m., three women passengers who tried to board the nearby bus, sustained injuries and they were admitted in the Government Hospital and subsequently, they were discharged. For that incident, a case in Crime No.642 of 2022 was registered on the file of Theni Police Station, for the offence under Sections 279, 337 of I.P.C. After investigation, the said case was closed as 'mistake of fact' and final report was also filed to that effect on 17.12.2012. While so, for the very same incident, the second respondent after domestic enquiry, imposed a punishment of one year increment cut without cumulative effect and adjusted four days of the petitioner's own leave for the suspension period. According to the petitioner, he is entitled for dropping of all punishments consequent to the report of the Sub-Inspector of Police, dated 17.12.2012 as 'Mistake of Fact' by virtue of 12(3) settlement, dated 28.09.1995. As the punishment were not dropped, the petitioner filed a writ petition in W.P(MD)No.2177 of 2017, wherein this Court vide order dated 13.02.2017, issued a direction to the respondents to consider the appeal of the petitioner, dated 13.06.2013 and dispose of the same. However, the first respondent vide the impugned order, dated 28.03.2017,



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dismissed the appeal filed by the petitioner confirming the order of the second respondent. Hence, challenging the same, the petitioner has filed this writ petition with the aforesaid prayer.

3. The learned counsel appearing for the petitioner would submit that once the Law Enforcing Agency referred the criminal case as 'Mistake of Fact', it is the bounden duty of the respondents to close the domestic enquiry without imposing punishment and therefore, the punishment imposed and the recovery made, are not sustainable and hence, prays for allowing of this writ petition.

4. Per contra, the learned standing counsel appearing for the respondents would submit that admittedly the petitioner retired from service in the year 2013. He would further submit that during the entire service, the petitioner committed one fatal accident and three minor accidents, in which, several persons sustained injuries and further, he damaged the bus and thereby, caused huge loss to the Corporation. Considering the past conduct of the petitioner, the second respondent imposed minimum punishment only. Prior to retirement, the punishment



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was imposed and recovery order was passed. After retirement, the petitioner filed W.P(MD)No.2177 of 2017 seeking for a direction to dispose of his appeal. Subsequently, the said appeal was dismissed vide the impugned order and challenging the same, the petitioner has filed this writ petition, which is not sustainable and prays for dismissal of this writ petition.

5. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

6. No doubt, the petitioner rendered service from 1994 and retired from service in the year 2013. While he was in service, he involved in one fatal accident and three minor accidents, in which, several persons sustained injuries. Though the petitioner claimed that the matter was subsequently referred as 'Mistake of Fact' and therefore, he is entitle for refund of the amount recovered from him, in catena of decisions, the Hon'ble Apex Court held that mere acquittal or filing of referred charge sheet cannot be a bar for the Department to continue disciplinary proceedings.



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7. In the present case, for the irregularities committed by the petitioner, disciplinary proceedings was initiated and a minimum punishment was imposed, which cannot be held as disproportionate and the punishment is just and reasonable for the lapses committed by the petitioner. Therefore, this Court is not inclined to interfere with the order impugned in this writ petition.

8. In the result, this writ petition is dismissed. No Costs.

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Index: Yes/No

NCC: Yes/No



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