



W.P.(MD)No.6064 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 09.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.(MD)No.6064 of 2016

P.Sankaran

... Petitioner

Vs.

1.The Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Rep. by its Managing Director,
Madurai Region,
Byepass Road,
Madurai.

2.The General Manager,
The Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Madurai Region,
Byepass Road,
Madurai.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the original impugned order in பார்வை: ஒநது/D7/தேக/DV/510, dated 05.12.2015 passed by the 2nd respondent and quash the same as illegal and further directing the 2nd respondent to reinstate the petitioner with continuity of service, issue suitable direction within the time contemplated in the provision of law without delay.



WEB COPY



W.P.(MD)No.6064 of 2016

For Petitioner : Mr.Rajasekaran
for M/s.G.M.Xavier

For Respondents : Mr.S.C.Herold Singh
Standing Counsel for R2

No appearance for R1

ORDER

The petitioner joined the services of the respondents on 27.02.2013. He was appointed as a driver and posted to T.Kallupatti Branch of the respondents. On 11.09.2014, while he was on duty driving a bus from E.Perumal Patti to Peraiyur at around 5.05 p.m. a two wheeler came and dashed against the bus. This resulted in the death of the two wheeler driver. Proceedings were initiated by the Elumalai police under Sections 297, 337 and 304(A) I.P.C. After investigation the said complaint was closed as “mistake of fact”.

2. Learned counsel for the petitioner invited my attention to the proceedings of the Judicial Magistrate, Usilampatti, whereunder the final report filed by the police stating that it was a mistake of fact was accepted and an order was passed on 26.02.2015.



W.P.(MD)No.6064 of 2016

3. The respondent management in the proceedings initiated for compensation in M.C.O.P.No.2220 of 2014, on the file of the Motor Accident Claims Tribunal (V Additional District Court) at Madurai, had taken the stand that the writ petitioner was not responsible for the accident, but it was the deceased, who has driven the two wheeler was responsible for the accident.

4. The issue as to whether differing stands can be taken in the disciplinary enquiry and in the case before the Motor Accident Claims Tribunal is the subject matter of reference before the Full Bench, hence, I am not going into that issue.

5. Mr.Rajasekaran, learned counsel for the petitioner, drew my attention to the judgment of the Division Bench of this Court in ***W.A.(MD) No.587 of 2021 dated 17.06.2021*** in the matter of ***The Managing Director, Tamil Nadu State Transport Corporation, Madurai Ltd., v. M.Sathyaseelan*** and placed strong reliance on paragraph No.4 in the said judgment. The Division Bench relying upon the 12(3) Settlement arrived at between the Management and the Labour Union on 13.09.1992 had held that where an employee is acquitted in a criminal case, the disciplinary authority may revise the punishment based on the orders of the Court.



The Division Bench has held as follows:-

WEB COPY

“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.”



W.P.(MD)No.6064 of 2016

WEB COPY

6. Therefore, the respondents should have reconsidered their decision in terms of clause 61 of the 12(3) Settlement as per the orders of the Judicial Magistrate, Usilampatti. The perusal of the impugned order shows that the order of acquittal has not been considered in its full strength and therefore, it requires interference in the hands of this Court.

7. In the light of 12(3) Settlement as interpreted by this Court in W.A. (MD) No.587 of 2021 dated 17.06.2021, the impugned order is set aside and the matter is remitted to the second respondent for reconsideration in the light of the order passed by the Judicial Magistrate, Usilampatti and in terms of Clause 61 of the 12(3) Settlement entered into between the Management and the Union on 13.09.1992. As the petitioner has not been in service from 05.12.2015 to till date, he will not be entitled to any back wages.

8. Accordingly, the Writ Petition stands allowed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

09.11.2023

NCC : Yes / No

5/7



W.P.(MD)No.6064 of 2016

Index : Yes / No
SJ

WEB COPY

V.LAKSHMINARAYANAN, J.

SJ

W.P.(MD)No.6064 of 2016



WEB COPY



W.P.(MD)No.6064 of 2016

09.11.2023