



W.P.(MD).No.1546 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.02.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.1546 of 2024

P.Shanmuga Muthaiya

... Petitioner

Vs

1. The General Manager,
Tamil Nadu Government Transport Corporation
Tirunelveli Division,
Tirunelveli, Tirunelveli District.

2. The Branch Manager,
Tamil Nadu Government Transport Corporation
Tiruchendur Branch, Tiruchendur,
Thoothukudi District.

... 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 pertaining to impugned order vide N.T2343-Sa-10-O Na P-Ta Na Aa Poga-Thi Li, dated 29.10.2022 issued by the 1st respondent and quash the same based on Action Dropped Final Report, dated 02.07.2021 filed by the Inspector of Police, Kulasekarapattinam Police Station, Thoothukudi District before the concerned Court and further direct the 1st respondent to drop the departmental punishment as the same is illegal.



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For Petitioner : Mr. V.Rajiv Rufus

For Respondents : Mr.K.Ramaiah
Standing Counsel

ORDER

The present writ petition has been filed challenging the impugned order vide N.T2343-Sa-10-O Na P-Ta Na Aa Poga-Thi Li, dated 29.10.2022 issued by the 1st respondent and quash the same based on Action Dropped Final Report, dated 02.07.2021 filed by the Inspector of Police, Kulasekarapattinam Police Station, Thoothukudi District before the concerned Court and further direct the 1st respondent to drop the departmental punishment as the same is illegal.

2.Heard, the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondents. Perused the materials on record.

3.(i).The petitioner is working as a Driver in the Tamil Nadu State Transport Corporation, Tirunelveli Division. On 11.04.2021, while he was operating the bus bearing Registration No.TN 72 N 2256 on the track of



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Tiruchendur to Udangudi, a 15 year old boy riding a Pulsar Bike dashed as against the bus, since he lost his control over the bike, died instantly on the spot. In this regard, an FIR came to be registered under Section 304(A) IPC on 11.04.2021.

(ii).In the meanwhile, a departmental action was initiated against the petitioner and he was placed under suspension, before the conclusion of enquiry on 12.04.2021. On 14.04.2021, he has received an inspection report and it was observed therein that, the accident occurred due to the petitioner's negligence. However, on verifying the CCTV footage, the police officials ascertained and concluded that death happened due to the negligence of the deceased boy. On that basis, the police officials dropped the action as against the petitioner on 02.07.2021.

(iii).However, the 3rd respondent without closing the matter, issued notice of enquiry frequently on various occasions to the petitioner and an order of punishment was passed on 29.10.2022, by imposing a punishment of postponement of annual increment for a period of three years with cumulative effect. Challenging the same, this writ petition came to be filed.



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5.The learned counsel for the petitioner submitted that in view of the dropping of charges as against the petitioner, the respondents ought to have closed the departmental enquiry without proceeding further. However, without considering the closure of criminal investigation by the police officials, the respondents proceeded with the same and concluded the enquiry by imposing the punishment. Such an exercise is un-warranted and prayed to allow the petition.

6.The learned Standing Counsel appearing for the respondents filed a counter of the first respondent and contended that the departmental action has been initiated against the petitioner for the violation of Standing Orders of the respondent Corporation. Therefore, the closure of investigation in favour of the petitioner will not affect the departmental action as against the petitioner. The punishment imposed on the petitioner is a caution that while in service, one should work more carefully avoiding accidents and on that basis, he prayed to dismiss the writ petition.

7.The learned counsel for the petitioner relied upon the decision of Hon'ble Apex Court in *Ram Lal Vs State of Rajasthan & Others* reported in



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CDJ 2023 SC 1109, in which, the Hon'ble Apex Court has dealt with a similar issue and the relevant portion is extracted hereunder:

“26. We are satisfied that the findings of the appellate judge in the criminal case clearly indicate that the charge against the appellant was not just, “not proved” - in fact the charge even stood “disproved” by the very prosecution evidence. As held by this Court, a fact is said to be “disproved” when, after considering the matters before it, the court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. A fact is said to be “not proved” when it is neither “proved” nor “disproved” [See Vijayee Singh and Others v. State of U.P. (1990) 3 SCC 190].

27. We are additionally satisfied that in the teeth of the finding of the appellate Judge, the disciplinary proceedings and the orders passed thereon cannot be allowed to stand. 19 The charges were not just similar but identical and the evidence, witnesses and circumstances were all the same. This is a case where in exercise of our discretion, we quash the orders of the disciplinary authority and the appellate authority as allowing them to stand will be unjust, unfair and oppressive. This case is very similar to the situation that arose in G.M. Tank (supra).”



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8.In the instant case, the accident had happened unexpectedly, due to the negligence of 15 year old minor, who was riding a Pulsor Bike with high speed, who lost control over his bike, dashed against the bus of the respondent Corporation, which was driven by the petitioner on the track of Tiruchendur to Udangudi, resulting in the death of minor boy. On verifying the CCTV footage, the police officials concluded that the accident happened, only because the rash and negligent riding of bike by the minor boy and thereby, dropped the action as against the petitioner. However, without considering the same, departmental action was proceeded by the respondents against the petitioner and imposed a punishment on him. The respondents Corporation ought to have exonerated the petitioner from all charges framed against him. On the other hand, the respondents Corporation proceeded with the enquiry and inflicted punishment on him, which is disproportionate to incidence of the accident, which is not attributable to the petitioner in any way.

9.In yet another case, the Hon'ble Apex Court in *G.M. Tank Vs State of Gujarat & Anr* reported in *AIR 2006 SCC 2129*, has dealt with similar issue, the relevant portion is extracted hereunder:



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*“In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in *Paul Anthony's* case (*supra*) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.”*

10. Fully fortified by the said decisions, observing that when the department as well as the disciplinary authority proceeded on the basis of same set of facts and evidence, without there being any iota of difference and if the delinquent has been exonerated in the criminal proceedings, as a consequence of the same, departmental proceedings should also be dropped forthwith. That apart, the Standing Order of the respondent Corporation under the Industrial Employment (Standing Orders) Act, 1946, in Clause 25(2)(d) reads as follows:



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11.In view of the said Clause 25(2)(d) of the Standing Orders, since the petitioner had been found “not guilty” by dropping action against him, he shall be entitled to the same wages as he would have received if he had not been placed under suspension, after deducting the subsistence allowance, if any, paid to him for such period.

12.Accordingly, the impugned order of the first respondent vide N.T2343-Sa-10-O Na P-Ta Na Aa Poga-Thi Li, dated 29.10.2022 is quashed and the first respondent is forthwith directed to drop the departmental punishment initiated against the petitioner. In fine, this writ petition is allowed. There shall be no order as to costs.

19.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
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L.VICTORIA GOWRI, J.

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ORDER IN
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