



W.P(MD)No.7752 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.7752 of 2019 and
WMP(MD) Nos.6177 & 6178 of 2019

T.Chandrasekaran

... Petitioner

Vs

- 1.The Principal Secretary,
Transport Department,
Tamil Nadu Government,
Fort St.George, Chennai.
- 2.The Managing Director,
Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Railway Station Road,
Kumbakonam,
Thanjavur District.
- 3.The General Manager,
Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Trichy Region,
Periyamilaguparai,
Trichy.
- 4.The General Manager,
Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Karur Region,
Karur.



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5.The Administrator,
Tamil Nadu State Transport Corporation
Employees Pension Fund Trust,
Thiruvalluvar House,
Pallavan Salai,
Chennai – 600 002.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned final order passed by the third respondent in Parvai:Tha.A.Po.Ka/Kumba/Trichy/T5/3323/2004, dated 06.09.2004 and quash the same and consequently direct the second and third respondents to disburse the back wages and attendant benefits to the petitioner.

For Petitioner	: Mr.N.Sudhagar Nagaraj
For R1	: Mr.G.V.Vairam Santhosh Additional Government Pleader
For R2 to R4	: Mr.P.Balasubramanian
For R5	: Mr.S.C.Herold Singh

ORDER

The Petitioner, who is working as a Tradesman in the Tamil Nadu Transport Corporation was imposed with a punishment of "cut of increments for a period of three years" by the third



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respondent on 06.09.2004 that this petitioner has taken the Transport Corporation bus, bearing registration number TN 45 N 1486 and caused a fatal accident. This order of punishment dated 06.09.2004 is challenged by way of this writ petition in the year 2019.

2.The case of the petitioner is that he is working as a Tradesman in the respondent Corporation and not the driver of the vehicle, which indulged in the accident. On the alleged date of occurrence, i.e, on 05.05.2004, one Ashok Kumar, a casual driver of the respondent Corporation has taken the bus bearing Registration No.TN 45 N 1486 and while he was returning the trip from Karattampatti to Musiri, Trichy District, he hit a cyclist, due to which, the cyclist had sustained severe injuries and thereafter he died. However, the petitioner has been made as a scapegoat, fixed as responsible for the accident and he was also imposed with a punishment of "cut of increments for a period of three years". For the accident that took place on 05.05.2004, a case in Crime No.339 of 2004 was registered for the offence punishable under Sections 279



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and 339 IPC as against the driver of the bus, by the Inspector of Police, Musiri Police Station, Musiri. On completion of investigation, a final report was filed as against the said Ashok Kumar and after a full-fledged trial, the said Ashok Kumar has been acquitted by the Magistrate Court. While this being so, the third respondent has issued a show cause notice to the petitioner on 15.05.2004, calling upon the petitioner to offer his explanation alleging that this petitioner has caused the alleged fatal accident. On 18.05.2004, the petitioner has submitted his explanation, denying the charges leveled as against this petitioner. Even then, the third respondent, by his proceedings in Tha.A.Po.Ka/ Kumba/ Trichy/ T5/3323/2004, dated 06.09.2004 has fixed the liability on the petitioner for the alleged fatal accident and he was imposed with a punishment of "cut of increments for a period of three years". Challenging the same, the petitioner has approached this Court in the year 2019.



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3.The learned Counsel appearing for the petitioner submits that though the criminal case in Crime No. 339 of 2004 has been registered as against the driver of the bus, namely Ashok Kumar and he was acquitted by the concerned Judicial Magistrate in CC No.339 of 2004, the petitioner, a Tradesman has been imposed with the punishment, which is violative of principles of natural justice.

4.The learned Standing Counsel appearing for the Transport Corporation has raised objections for entertaining this writ petition that as against the order of punishment, the available remedy for this petitioner is only before the Labour Court and he cannot maintain this writ petition. The learned Standing Counsel has also pointed out that for the order of punishment, which was imposed in the year 2004, this Writ petition was filed in the year 2019 after a period of 15 years, and therefore on the ground of laches, this writ petition is liable to be dismissed. The learned Standing Counsel by relying upon the Judgment of the Full Bench of this Court, in



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Ltd., reported in ***2004 3 CTC*** submits that the order of punishment imposed as against the employee of the Transport Corporation has to be agitated only before the Labour Court and not before this Court, by way of a writ petition. According to the learned Standing Counsel, the petitioner, a mechanic has driven the vehicle without any driving license and authorization and caused a fatal accident and therefore he was dealt with by issuing a charge memo. After conducting a full-fledged enquiry, he was imposed with a punishment. The petitioner has not pointed out any defects in the procedures followed by the respondents in conducting the disciplinary proceedings and therefore, there is no need to interfere with the order impugned in this writ petition.

5.This Court considered the rival submissions made and also perused the materials placed on record.



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6. Admittedly, this petitioner is a tradesman working in the respondent Corporation and not a driver. He was issued with a charge memo that he has taken the Transport Corporation bus bearing registration number.TN 45 N 1486 and caused a fatal accident on 05.05.2004. It appears that a criminal case was registered on the alleged accident in Crime No.339 of 2004, on the file of the Musiri Police Station. This criminal case was registered, without mentioning the name of the driver of the bus bearing registration no.TN45 N 1486 and in the accused column, the accused is shown as the driver of the town bus bearing registration No. TN45 N 1486. The Sub Inspector of Police, Musiri Police, who has filed the criminal case in Crime no.339 of 2004 has also filed a final report before the learned Judicial Magistrate, Musiri in CC No. 229 of 2004 as against one Ashok Kumar, S/o Elumalai, as the accused, who said to have driven the vehicle bearing Registration No.TN 45N 1486 on 05.05.2004 and caused the accident. The said Ashok Kumar was also acquitted by the learned Judicial Magistrate after conducting a full-fledged trial, by order dated 07.11.2007. The



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Department has conducted the enquiry, proceeded with the petitioner as if that this petitioner has driven the bus. However, after the investigation, it was found that one Ashok Kumar has driven the bus. Before fixing the accused /driver of the vehicle as that of the said Ashok Kumar, S/o Elumalai, the entire proceedings as against this petitioner was proceeded and concluded without considering the investigation report. Though there is a delay in filing this writ petition, it is reported that this petitioner is still serving in the Transport Corporation. According to this petitioner, apprehending further threat or punishment from the higher officials, he has not challenged the order of punishment for a considerable period. The learned Standing Counsel has also taken a plea that this petitioner ought to have challenged this order of punishment only before the Labour Court. However, when this writ petition was taken up for admission, there was no such objection from the Transport Corporation and notice was taken by the learned Standing Counsel for the Transport Corporation. Subsequently, this writ petition has also been admitted by this Court, by order, dated 09.04.2019.



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7. Therefore, this Court is not inclined to refer this matter to the Labour Court after five years. The base, on which the departmental proceedings as against this petitioner has been initiated itself appears to be wrong, in view of the final report filed by the respondent police.

8. In view of the foregoing discussions and reasons, the order of punishment imposed on the petitioner, by the General Manager, Tamil Nadu Transport Corporation (Kumbakonam) Ltd., in proceedings in Tha.A.Po.Ka Kumba/ Trichy/ T5/3323/2004, dated 06.09.2004 is hereby set aside. Accordingly, this writ petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

03.12.2024

NCC: Yes/No
Index: Yes
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