



W.P.(MD)No.15651 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 04.06.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.15651 of 2021
and
W.M.P.(MD)No.12612 of 2021

V.Thavam

... Petitioner

Vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Madurai Division,
By-pass Road,
Madurai.

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

3.The Branch Manager,
Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Rajapalayam Branch,
Virudhunagar Region,
Rajapalayam,
Virudhunagar District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the 1st and 2nd respondents in connection with the impugned order of punishment passed by the 2nd respondent vide his proceedings in Ref: Legal/Sa3/4870/6B/2019 dated 03.11.2020 and the impugned order of confirmation passed by the 1st respondent vide his proceedings in Ref:



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Legal/Sa3/4870/6B/2019 dated 13.07.2021 on the petitioner's appeal and quash the both as illegal and arbitrary and consequently direct the respondents to treat the suspension period as duty period and thereby consider his case for 2nd Review Promotion based on his length of service.

For Petitioner : Mr.G.Thalaimutharasu
For Respondents : Mr.S.C.Herold Singh
Standing Counsel

ORDER

This Writ Petition has been filed to quash the impugned order of punishment passed by the 2nd respondent vide his proceedings in Ref: Legal/Sa3/4870/6B/2019 dated 03.11.2020 and the impugned order of confirmation passed by the 1st respondent vide his proceedings in Ref: Legal/Sa3/4870/6B/2019 dated 13.07.2021 on the petitioner's appeal and to direct the respondents to treat the suspension period as duty period and thereby consider his case for 2nd Review Promotion based on his length of service.

2.The petitioner joined as a Driver in the respondent Transport Corporation on 25.08.2007 through employment exchange and presently he is working in the second respondent branch. On the fateful day that is on 10.10.2019, while he was deputed to ply the bus bearing Registration No.TN-67-N-0771 from Kovilpatti to Courtalam route, while he was proceeding towards Rajapalayam from Courtalam, one Arumugam of Chindamani village dashed the back footboard of the petitioner's bus



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with his TVS XL Moped due to the influence of alcohol and sustained injuries, following which he died on 11.10.2019 in the Government hospital, at Puliyangudi.

3.Though there was no fault on the side of the petitioner in this regard the Inspector of Police, Puliyangudi Police Station registered a case against the petitioner in Crime No.378 of 2019 on 11.10.2019 under Sections 279 and 304A of IPC. Thereafter, the petitioner was placed under suspension on 13.10.2019 and was issued with a charge memo with a proceedings of the first respondent dated 23.10.2019. In the said charge memo, the first respondent had leveled three counts of charges for the very same incident, namely (i)on 10.10.2019, the Corporation bus bearing Registration No.TN-67-N-0771 playing in the Kovilpatti - Courtalam route it was dashed by a TVS XL Moped bearing Registration No.TN-79-3173 in the back footboard near mosque bus stop at Puliyangudi and a person succumbed to injury on 11.10.2019, (ii) being a Driver, the petitioner failed to drive the bus with care by monitoring the left and right rear view mirrors, (iii). The petitioner was negligent in duty and had violated Rule 16(4) and 16(8) of the Standing Orders of the Tamil Nadu Transport Corporation. However, the accident happened only because of the fact that the deceased Arumugam was in a drunken state of condition, about which the petitioners submitted a detailed explanation dated 30.10.2019, to the first respondent requesting him to revoke the



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order of suspension. Thereafter, the first respondent being satisfied with his explanation revoked the order of suspension vide proceeding dated 11.11.2019 and permitted the petitioner to continue his service as a Driver in the second respondent branch.

4.In these circumstances, the Inspector of Police, Puliyangudi Police Station, who investigated the case in Crime No.378 of 2019 dated 11.10.2019 had confirmed that the deceased Arumugam was under the influence of alcohol and drunken state at the time of accident and on the basis of the postmortem certificate issued by the Department of Forensic Medicine, Tirunelveli Medical College and the statement of witnesses the Inspector of Police filed a final report before the learned Judicial Magistrate Court, at Sivagiri stating that the case against the petitioner has been referred and requested the Court not to take further action in the said Crime Number vide proceedings in FR-357 of 2019 dated 12.11.2019. Even after the closure of the said crime as against the petitioner by the jurisdictional Police, the second respondent did not discharge the petitioner from the charges levelled against him and kept the same pending for a prolonged time, as a result of which, the petitioner filed a Writ Petition before this Court in W.P.(MD)No.1569 of 2020 to quash the charge memo issued to him by the second respondent vide proceedings dated 23.10.2019. The Writ Petition was disposed of by this Court with the direction to establish the merit of his case before the



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disciplinary authority and consequently issued a specific direction to the second respondent to conclude all further proceedings pursuant to the charge memo dated 23.10.2019 within a period of 3 months from the date of receipt of copy of the order after giving the opportunity of hearing to the petitioner.

5. Thereafter, pursuant to the said order, the second respondent initiated the inquiry vide proceedings dated 11.06.2020, in which the petitioner participated extending fullest cooperation to the inquiry Officer, following which the second respondent imposed a punishment of stoppage of yearly increment for a period of 18 months with cumulative effect vide proceedings in Ref:Legal/Sa3/4870/6B/2019 dated 03.11.2020 even without furnishing a copy of the findings of the inquiry Officer dated 19.09.2020. The said order came to be passed without considering the petitioner's elaborate explanation which was submitted to the inquiry Officer. Aggrieved by the second respondent's proceedings passing the order of punishment vide proceedings dated 03.11.2020, the petitioner submitted his Appeal petition dated 15.12.2020 before the first respondent requesting him to set aside the impugned order of punishment passed by the second respondent dated 03.11.2020, thereby considering his case for second review promotion and yearly increments based on the length of his service. Since the first respondent did not turn up to consider the petitioner's appeal petition and kept the same



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pending, the petitioner was constrained to file a Writ Petition before this Court in W.P.(MD)No.6225 of 2021, challenging the impugned order passed by the second respondent. This Court by its order dated 19.03.2021 disposed of the said Writ Petition with a specific direction to the first respondent to consider and pass orders on the petitioner's Appeal dated 15.02.2020 within a period of three months. Pursuant to the said order passed by this Court, the first respondent proceeded to confirm the punishment imposed by the second respondent dated 03.11.2020, vide impugned order dated 13.07.2021. Because of the non-speaking impugned order passed by the first respondent, the petitioner has been deprived of his second review of promotion and hence, challenging the same, this Writ Petition came to be filed.

6.The learned counsel appearing for the petitioner submitted that the act of the first and the second respondents are *per se* illegal, arbitrary and unjustifiable and the same is a clear act of violation of Articles 14 and 21 of the Constitution of India. That apart he insisted that a clear perusal of the postmortem report and the statement of witnesses itself would make it clear that it was only because of the mistake committed by the Moped driver, the accident had happened for the reason that the Moped driver had been under the influence of alcohol and that the petitioner is in no way connected to the accident. Therefore, the first and second respondents ought to have dropped the punishment



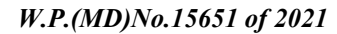
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pending against the petitioner and on that basis, the impugned orders are liable to be set aside and pressed for allowing the Writ Petition.

7.The learned counsel for the respondent Corporation relying upon the judgment passed the Hon'ble Division Bench of this Court in W.A. (MD)No.587 of 2021 dated 17.06.2021, wherein the Hon'ble Division Bench has dealt with a similar case insisted that the impugned orders passed by the respondents are in accordance with law and the same need not be interfered.

8.For better clarity, the operative portion of the aforesaid judgment, which is relevant to the facts and circumstances of this case is extracted as follows:-

"4.The disciplinary authority imposed a major penalty of stoppage of increment for a period of two years with cumulative effect, by order, dated 30.07.2010. The appellant preferred an appeal before the first appellant and prayed for review of the order of punishment. One of the grounds raised by the respondent / workman was by referring to a memorandum of settlement entered into between the Employees Union and the Management under Section 12(3) of the Industrial Disputes Act, 1947, dated 13.09.1992 and in Clause 61 of the settlement, in the case, where the employee is acquitted in the criminal case, the disciplinary authority may revise the punishment based on the orders of the Court. The first appellant exercising such power, reviewed the order

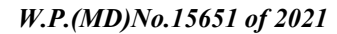


5. *In our considered view, the learned writ Court was not right in interfering with the exercise of discretion by the first appellant authority,*

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



9. Heard the learned counsel for the petitioner, the learned Standing Counsel for the respondents and carefully perused the materials available on record.

10. However, I am of the considered view that the aforesaid judgment is not applicable to the facts and circumstances of the instant case. Clause 61 of the Settlement under Section 12(3) of the Industrial Dispute Act, 1947 dated 30.09.1992 deals with disciplinary action in accident cases. Clause 61 is extracted as follows:-

“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.”

11. In the instant case, the materials available on record would clearly throw light on the fact that the accident which happened on the fateful day, that is on 10.10.2019, while the petitioner was plying the bus



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bearing Registration No.TN-67-N-0771 in the Kovilpatti to Courtralam route exclusively when one Arumugam of Chindamani village dashed the back footboard of his bus with his TVS XL Moped under the influence of alcohol, the said person sustained injuries resulting in his death on 11.10.2019. The same has been clearly established by the postmortem certificate issued by the Department of Forensic Medicine, Tirunelveli Medical College as well as the statement of witnesses.

12.Relying upon the said documentary evidence, the Investigating Officer, that is the Inspector of Police, Puliyangudi Police Station who investigated the case in Crime No.378 of 2019 dated 11.10.2019, which has been registered as against the petitioner was referred as further action dropped(FAD). The said decision was taken by examining 16 witnesses and the Investigating Officer has also submitted a report before the learned Judicial Magistrate Court, at Sivagiri submitted that the accident had happened only due to the mistake of the deceased Arumugam and the petitioner is innocent. Following which, the learned Judicial Magistrate also proceeded to close the case. It is only after the closure of the criminal case as referred as further action dropped as on 12.11.2019, the impugned order of punishment of stoppage of yearly increment for a period of 18 months with cumulative effect came to be passed by the second respondent with a proceedings dated 03.11.2020. It is ironic to find that the first respondent had also confirmed the aforesaid



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punishment imposed by the second respondent without going into the merits of the case by a cryptic order.

13.A careful perusal of the order passed by the first respondent on 13.07.2021 would clearly reveal that the same is a cryptic order, which has been passed without going into the merits of the case. Clause 61 of the Memorandum of Settlement under Section 12(3) of the Industrial Dispute Act, 1947 dated 13.09.1992, mandates that a Driver who is involved in an accident if held guilty of charge in domestic inquiry and subsequently honorably 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.

14.However, in the instant case, the case has been closed on the basis of the referral report of the Investigating Officer even before the commencement of trial. In view of the same, the decision of the disciplinary authority has to be revised on the basis of the order of the Court by which the Crime No.378 of 2019 of Puliyanankudi Police Station came to be closed by the jurisdictional Magistrate.

15.In view of the same, this Court is of the considered view that the impugned orders are *per se* illegal and arbitrary and the same is liable to be quashed. Accordingly, the impugned order passed by the second



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respondent vide proceedings dated 03.11.2020 and the impugned order of confirmation passed by the first respondent vide proceedings dated 13.07.2021 is hereby quashed and consequently, the respondents are directed to treat the suspension period of the petitioner as duty period.

16.Accordingly, the Writ Petition stands allowed. There shall be no order as to costs.

04.06.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes

Mrn

To

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L.VICTORIA GOWRI, J.

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