



WP.(MD).No.20434 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 20.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.20434 of 2022

and

W.M.P.(MD)No.14801 of 2022

The Management,
Tamil Nadu State Transport Corporation,
Tirunelveli Limited,
Tirunelveli Division,
Ranithotham, Nagercoil,
Kanyakumari District.

... Petitioner

Vs.

E.K.Hutsun,
Driver, EDP No.3394,
represented by,
General Secretary,
Tamil Nadu State Transport Employees,
Union 176/84/KKM, Ranithotham,
Nagercoil,
Kanyakumari District.

... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the award of the Labour Court, Tirunelveli in I.D.No.103 of 2018 dated 30.11.2020 and quash the same.

For Petitioner	: Mr.D.Jebaraj
For Respondent	: Mr.R.Murugan



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ORDER

WEB COPY This Writ Petition has been filed for issuance of a Writ of Certiorari, to quash the award in I.D.No.103 of 2018 dated 30.11.2020, on the file of the Labour Court, Tirunelveli.

2.The Tamil Nadu State Transport Corporation Management, Tirunelveli Limited, Tirunelveli Division is the petitioner in this petition. The respondent is one driver E.K.Hudson, who was working as Driver in the petitioner Management. On 19.06.2015, while the respondent was discharging his duty in the route number 85D/B along with Conductor M.Anthony, plying from Marthandam to Aarukani route at about 12.50 p.m., the vehicle met with an accident at CheriyaKolai near Malayankavu turning. The driver respondent was found to have hit head in the middle of the road against a TVS motorcycle bearing Registration No.KL-01-AE-8985. As a result of which, the rider of the motorcycle sustained fatal injury in the head and was declared dead. Subsequently, an FIR was registered as against the respondent driver in Crime No.583 of 2015, Vellarada Police Station on 19.06.2015. Following which, the respondent was suspended from service on 19.06.2015 and he was visited with a charge memo dated 14.09.2015 and an enquiry was



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conducted giving opportunity to the delinquent. Thereafter, the enquiry Officer concluded in his report dated 08.09.2016 that the charges against the respondent delinquent is proved. Following which, a punishment of increment cut for three years with cumulative effect, by order in 4502/DP/TNSTC/2015 dated 24.02.2017 came to be passed. The delinquent respondent raised disputes through the trade Union which resulted in industrial dispute I.D.No.103 of 2018 on the file of the learned Labour Court, Tirunelveli. After elaborate trial, the learned Labour Court by its judgment in I.D.No.103 of 2018 dated 30.11.2020 has set aside the punishment of increment cut for three years with cumulative effect imposed on the delinquent respondent. Challenging the same, this Writ Petition came to be filed by the petitioner Transport Corporation Management.

3.The learned Standing counsel for the petitioner Transport Corporation submitted that the reasoning of the learned Labour Court that the departmental proceedings were perverse as the Department pleaded that the Driver is not responsible for the accident before the learned Motor Accidents Claim Tribunal is not sustainable. He insisted that the learned Labour Court erred in



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setting aside the well considered order of the Department punishing the delinquent respondent. He further submitted that the judgment of the learned Labour Court is directly in conflict with the judgment of the Hon'ble Apex Court in the cases of ***Samar Bahadur Singh v. State of Uttar Pradesh*** reported in **2011 (9) SCC 94** and the case of ***Union of India v. Sitaram Mishra and another*** reported in **2019 20 SCC 588**, wherein the Hon'ble Apex Court held that '*acquittal in criminal trial would have no bearing upon the conduct or conclusion of disciplinary proceedings and if the disciplinary inquiry was properly held the same could not be set aside or modified*'. On that basis, he contended that the learned Labour Court ought not to have interfered with the punishment imposed on the delinquent respondent employee and pressed for allowing the Writ Petition.

4.Per contra the delinquent employee has filed a counter affidavit and the learned counsel for the respondent submitted that the legal heirs of the deceased rider of the motor cycle had filed O.P.(M.V)No.2471 of 2015 before the learned Motor Accident Claims Tribunal, Trivandrum by arraying the respondent workman as first respondent and the petitioner Management as second



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respondent for rash and negligent driving and claimed a compensation of Rs.20,00,000/-. That apart a criminal case in C.C.No.583 of 2015, which was proceeded as against the respondent delinquent workman also was concluded in favour of the respondent by an order of acquittal. Hence, the allegation of the petitioner Management that the delinquent respondent workman had been rash and negligent driving is not sustainable.

5.He also submitted that the contention of the petitioner Management that the driver caused death of the motorist and also caused huge monetary loss to the Management due to his indiscipline cannot be sustained by taking into account the written statement filed by the petitioner Management in O.P.(M.V.) No.2471 of 2015 before the learned Motor Accidents Claims Tribunal, Trivandrum, more particularly that in the said counter, it had been pleaded by the petitioner Management that there is no negligence or rashness on the part of the workman and he drove the bus with due care, caution and diligence by following the traffic rules and hence, the workman is not liable for the said accident.

6.Further in the counter, it was categorically pleaded that the



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rider of the two wheeler had hit from behind the bus and hence, the cause of death is attributable only to the rider of the two wheeler and not the delinquent employee. The said contention raised by the petitioner Management before the learned Motor Accidents Claims Tribunal cannot be negated and the Corporation cannot take a U turn by pleading before this Court contending that the respondent delinquent employee is attributable for whatever had happened on the date of accident. On that basis, he pressed for dismissal of the Writ Petition.

7. Heard the learned counsel appearing for the petitioner corporation, learned counsel appearing for the respondent and carefully perused the materials available on record.

8. The Hon'ble Division Bench of this Court in the case of ***Tamil Nadu State Transport Corporation (Kumbakonam Division II) Limited, represented by its Managing Director, Tiruchirappalli and another versus P. Karuppasamy*** reported in ***(2008) 1 MLJ 694*** has dealt with the similar case and the relevant portion of which is extracted as follows:-



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“24. The principles laid down in the aforesaid rulings are squarely applicable to the facts of the present case. The appellant Corporation, having taken a plea that the driver of the bus was not responsible for the accident, could not turn around to say that he was responsible for the accident. As such, it is very much bound by the pleadings raised by it before the Tribunals and this Court. The law is well settled as to the aspect that the standard of proof in both the proceedings before the criminal court and the domestic enquiry officer are entirely different. However, since the Corporation has consciously raised the contention in favour of the bus driver before the judicial fora, it is precluded from proceeding against him in departmental proceedings. Though the extent of proof is sufficient to the commission of delinquency in the matter of departmental proceedings, the management could not lay its hands on the workman, detrimental to his interest, after defending him before various judicial fora and accepting the findings of the Motor Accident Claims Tribunal, Karur. Further, in the dismissal order, dated 09.12.1998, it is mentioned that even though a scrutiny of the service records would show that the respondent was not at all penalised at any point of time, since he caused a fatal accident, it was proposed to dismiss him from service, which shows that the past records of the respondent were also clean.”

9. Fully fortified by the discussions of the Hon'ble Division Bench in the judgment extracted supra, I am of the considered view that the petitioner Transport Corporation having taken a plea



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before the learned Motor Accident Claims Tribunal that their employee bus driver was not responsible for the accident, cannot impose a punishment after domestic inquiry by holding him that he is guilty of charges.

10.Accordingly, this Court is not inclined to interfere with the impugned order of the learned Labour Court, Tirunelveli in I.D.No. 103 of 2018 dated 30.11.2020, setting aside the punishment of increment for three years with cumulative effect imposed on the respondent employee.

11.Accordingly, this Writ Petition fails and stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn



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L.VICTORIA GOWRI, J.

Mrn

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