



WP(MD)No.21189 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.21189 of 2022
and
WMP(MD)No.15391 of 2022

S.Manoharan

.. Petitioner

v.

1.The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Transport Department,
Secretariat,
Chennai – 600 009.

2.The Managing Director,
Tamil Nadu State Transport Corporation (Tirunelveli) Ltd.,
Tirunelveli,
Tirunelveli District.

3.The General Manager,
Tamil Nadu State Transport Corporation (Tirunelveli) Ltd.,
KTC Nagar,
Tirunelveli Region,
Tirunelveli.

.. Respondents



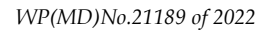
WP(MD)No.21189 of 2022

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorairified Mandamus calling for the records relating to the impugned order dated 30.12.2016 passed by the third respondent in T.8861/சு7/ஒபி/திலி/15 (entry in Service Registrar Page No. 37A), quash the same and consequently, directing the respondents 2 & 3 to recalculate the retirement benefits of the petitioner such as Gratuity, Provident Fund, Commuted value of Pension, Earned Leave Salary and pension amount by taking basic pay and all other back wages of the petitioner after including the increment for two years with cumulative effect and further directing the respondents 2 & 3 to sanction the difference amount of retirement benefits to the petitioner with 18% interest within a stipulated time limit.

For Petitioner : Mr.N.Sudhagar Nagaraj

For Respondents : Mr.G.V.Vairam Santhosh,
Additional Government Pleader
for R.1

Mr.D.Jebaraj
for R.2, R.3



The petitioner, while working as a Driver in the respondents Corporation, caused an accident on 23.08.2015 near Satur - Kovilpatti Highway. In the accident, the duty Conductor and some passengers got injured and the bus was also damaged to an extent of Rs.50,000/-. The Sattur Police registered a case in Crime No.242 of 2015 for the offence u/s. 279, 337, 338 IPC. The injured persons have filed MCOP No.835 of 2016 before the Special Sub Court, Tirunelveli and the Court has awarded a compensation of Rs.2,12,275/- to the victims, by judgment dated 18.01.2021. The respondents Corporation has also initiated departmental proceedings as against the petitioner, by issuing a charge memo on 29.08.2015. The petitioner has offered his explanation and thereafter, a domestic enquiry was conducted. In the departmental proceedings, the petitioner was imposed with a punishment of stoppage of increment for two years with cumulative effect. As against this order of punishment, the petitioner has filed this writ petition.



2.Learned Counsel for the petitioner submitted that the departmental proceedings was initiated as against the petitioner, based on the criminal case registered in Crime No.242 of 2015. The said criminal case was closed u/s.468 CrPC. Since the criminal case based on which the charge memo was issued itself has been closed, the punishment imposed by the respondents also has to be reviewed.

3.This Court considered the rival submissions made on either side and perused the materials placed on record.

4.The order of punishment imposed by the disciplinary authority is challenged in this writ petition. The disciplinary proceedings was initiated as against the petitioner for his involvement in an accident on 23.08.2015. The criminal case, which was registered for this accident, appears to have been closed on the ground of limitation u/s.468 CrPC. That does not prohibit the disciplinary authority from proceeding further with the departmental disciplinary action.



5.It is a settled position that acquittal in a criminal case, by itself, is not a ground to review the punishment imposed in a departmental proceeding, inasmuch the disciplinary enquiry is not governed by proof beyond reasonable doubt or by the rules of evidence which is governing the criminal trial.

6.The observations made by the Hon'ble Supreme Court in *State of Rajasthan and Others v. Heem Singh* [2021 (2) CTC 332], with regard to the effect of an acquittal in a disciplinary proceedings, are extracted as under:-

“34. In the present case, we have an acquittal in a criminal trial on a charge of murder. The judgment of the Sessions Court is a reflection of the vagaries of the administration of criminal justice. The judgment contains a litany of hostile witnesses, and of the star witness resiling from his statements. Our precedents indicate that acquittal in a criminal trial in such circumstances does not conclude a disciplinary enquiry. In Southern Railway Officers Association v. Union of India, this Court held:

“37. Acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the disciplinary authority. The High Court did not say that the said fact had not been taken into consideration. The revisional authority



did so. It is now a well-settled principle of law that the order of dismissal can be passed even if the delinquent official had been acquitted of the criminal charge."

In Inspector General of Police v. S. Samuthiram, a two-Judge Bench of this Court held that unless the accused has an "honorable acquittal" in their criminal trial, as opposed to an acquittal due to witnesses turning hostile or for technical reasons, the acquittal shall not affect the decision in the disciplinary proceedings and lead to automatic reinstatement. But the penal statutes governing substance or procedure do not allude to an "honourable acquittal". Noticing this, the Court observed:

"Honourable acquittal:

24.The meaning of the expression "honourable acquittal" came up for consideration before this Court in RBI v. Bhopal Singh Panchal [(1994) 1 SCC 541 : 1994 SCC (L&S) 594 : (1994) 26 ATC 619] . In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal



Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression “honourably acquitted”. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

25. *In R.P. Kapur v. Union of India [AIR 1964 SC 787] it was held that even in the case of acquittal, departmental proceedings may follow where the acquittal is other than honourable. In State of Assam v. Raghava Rajgopalachari [1972 SLR 44 (SC)] this Court quoted with approval the views expressed by Lord Williams, J. in Robert Stuart Wauchope v. Emperor [ILR (1934) 61 Cal 168] which is as follows:*

“8. ... ‘The expression “honourably acquitted” is one which is unknown to courts of justice. Apparently it is a form of order used in courts martial and other extrajudicial tribunals. We said in our judgment that we accepted the explanation given by the appellant, believed it to be true and considered that it ought to have been accepted by the government authorities and by the Magistrate. Further, we decided that the appellant had not misappropriated the monies referred to in the charge. It is thus clear that the effect of our



judgment was that the appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what government authorities term "honourably acquitted".'

26. As we have already indicated, in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say that in the instant case,



WP(MD)No.21189 of 2022

the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.””

7.The scope of judicial review in matters relating to disciplinary proceedings is very limited. It is meant to ascertain as to whether due process was followed and whether a fair opportunity was accorded to the employee concerned. The power of Courts is limited to reviewing the decision making process, rather than the merits of the decision itself. This is to ensure fairness in treatment and not the fairness of the conclusion. The Courts should not interfere with the findings of the fact arrived at in the departmental enquiry proceedings, except in cases of mala fide or perversity.

8.In the case on hand, the petitioner has not raised any such plea of lack of jurisdiction or mala fide or perversity, except the closure of the criminal case. Therefore, this Court is not inclined to entertain this writ petition.



WP(MD)No.21189 of 2022

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Accordingly, this writ petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No **26.11.2024**
NCC : Yes / No
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To

- 1.The Secretary to Government,
Government of Tamil Nadu,
Transport Department,
Secretariat,
Chennai – 600 009.
- 2.The Managing Director,
Tamil Nadu State Transport Corporation (Tirunelveli) Ltd.,
Tirunelveli,
Tirunelveli District.
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WP(MD)No.21189 of 2022

B.PUGALENDHI, J.

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