



W.P.(MD)No.13281 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.04.2025

CORAM

THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

W.P.(MD)No.13281 of 2019

P.Ramasamy

... Petitioner

Vs.

1.The Managing Director
Tamil Nadu State Transport Corporation(Kumbakonam)
Kumbakonam, Thanjavur District.

2.The General Manager,
Tamil Nadu State Transport Corporation(Kumbakonam)
Kumbakonam, Thanjavur District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent's impugned order No.தஅபோக/கும்ப/திருச்சி/124/6344/2016 dated 24.05.2017 by de-promoting him from the post of Senior Driver to Next to Lower Level and consequential impugned order No.தஅபோக/கும்ப/திருச்சி/124/6344/2016 dated 11.07.2017 issued by the first respondent and quash the same as devoid of merit and consequently direct the respondents to give all service benefits in the cadre of Senior Driver by considering the petitioner's representation dated 27.04.2019, within the period as stipulated by this Court.



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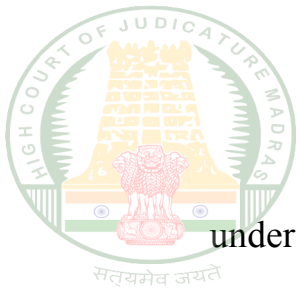
For Petitioner : Mr.A.Haja Mohideen

For Respondents : Mr.P.Balasubramaniam,

ORDER

Under assail is the order dated 24.05.2017 passed by the first respondent by de-promoting him from the post of Senior Driver to Next to Lower Level.

2.The case of the petitioner is that he was appointed as Driver on 10.03.1995. While he was driving the bus in Manaparai-Karur route, while entering into Thogamalai bus stand, the bus was ran over on one Vijaya, since she suddenly crossed the road and she was died on the spot. On the said occurrence, a criminal case was registered in Cr.No.472 of 2016 under Section 279, 304(A) IPC. While criminal case is pending, the respondent's Branch Manager called him and gave false promise that he will help him to withdraw the punishment, if he gave a written letter as per he dictates. Accordingly, on 30.02.2017, he got a letter from him by admitting the offence. He had submitted a reply dated 30.03.2017 by narrating the reasons for the above occurrence. His suspension order was revoked on 18.02.2017 and he was permitted to serve. Subsequently,



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under Section 24(28)(g), 24(27)(h) and 24(40) of the Employees Certified Standing Orders, recommended for dismissal. He preferred an appeal on 01.06.2017 to withdraw the order impugned. The respondent passed consequential impugned order dated 11.07.2017 by rejecting his appeal. He has sent mercy petition on 01.08.2017 and the same is pending. He was acquitted from the criminal case in C.C.No.97 of 2017 vide judgment dated 18.02.2019. Hence, the writ petition.

3.The learned counsel appearing for the petitioner would submit that the respondents without hearing the petitioner, without following the procedure, had passed the order impugned and the same is unsustainable in law. The respondents ought to have considered that the petitioner was acquitted from the criminal case. There is no specific complaint against the petitioner by public.

4.Per contra, the learned counsel appearing for the respondents would submit that a charge memo dated 10.11.2016 was issued and the petitioner chosen to submit his explanation. His explanation was not satisfied and enquiry was ordered by appointing enquiry officer. The petitioner participated in the domestic enquiry and the enquiry was



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conducted truly. The petitioner was examined himself and the management witnesses was cross examined by the petitioner. The enquiry officer held that the charges framed against the petitioner have been proved. The respondents after considering the enquiry officer's report and further representation submitted by the petitioner and also while considering past record of service, it was found that he was guilty in as many as on 20 previous occasions for various misconducts and on two occasions, the petitioner had caused fatal accident due to his fault. Considering the gravity of the misconduct, the order impugned came to be passed. He would submit that if the petitioner wants to challenge the punishment awarded to him, he has to approach the competent labour court. Without exercising the remedy properly before the labour court, he had filed the present writ petition and the same is not maintainable. To strengthen his contention, he has relied upon the judgment of the Hon'ble Full Bench of this Court reported in **(2004) 2 MLJ 687 P.Pitchumani Vs. The Management of Sri Chakra Tyres Limited, represented by its Managing Director, Madurai and Others.**

5.This Court has considered the submissions made on either side and perused the available records.



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6.It is seen from the records that while the petitioner was working as Driver, on 02.11.2016, in a bus bearing Reg.No.TN 45 N 3171 from Manaparai to Karur, at about 07.10 pm., when the bus was entered into Thogamalai bus stand, it was dashed against one handicapped lady and due to this accident, she died on the spot. For the above misconduct, a charge memo dated 10.11.2016 was issued. He submitted his explanation and the same was found not satisfactory and hence, a domestic enquiry was ordered by nominating Enquiry Officer. The management was examined the witness in the presence of the petitioner and the petitioner was examined himself and he cross examined the management witnesses. The enquiry officer, in his findings dated 30.12.2016 held that charges framed against the petitioner have been proved. Considering the enquiry officer's findings and considering the past records of the petitioner and also considering the gravity of the misconduct proved, the respondents came to a provisional conclusion to dismiss the petitioner from service. Accordingly, a show cause notice dated 28.02.2017 was issued to the petitioner. He submitted his explanation. After taking note of the gravity and serious nature of the misconduct committed by the petitioner and after considering his past

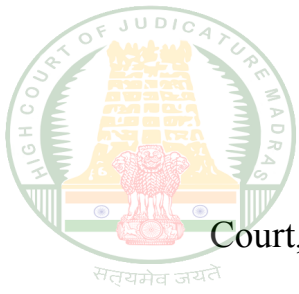


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records, the punishment was ordered on 11.07.2017 demoting the petitioner from the post of Senior Grade Driver to Driver instead of dismissal, due to his age of superannuation.

7.As rightly pointed out by the learned counsel appearing for the respondents, if the petitioner wants to challenge the punishment imposed on him, he has to raise industrial dispute under Section 2(K) of the Industrial Dispute Act, 1947 before the jurisdictional Labour Court. It is relevant to refer the judgment of Hon'ble Full Bench of this Court reported in *(2004) 2 MLJ 687 P.Pitchumani Vs. The Management of Sri Chakra Tyres Limited, represented by its Managing Director, Madurai and Others* wherein it has been held that “dismissals, transfers and other matters concerning the service conditions of employees governed by Industrial Dispute Act, have to be adjudicated only by the forums created under the said statute and not otherwise”.

8.It is informed by the learned counsel on either side that the petitioner retired from service on 30.06.2019. In view of the ratio laid down by the Hon'ble Full Bench of this Court, the petitioner without exhausting the remedies available to him before the jurisdictional Labour



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Court, he approached this Court by way of writ petition, which is not maintainable. After retiring from service, there is no employer and employee relationship between the respondents and the petitioner. There is no merits in this writ petition and the same is liable to be dismissed.

9.In the result, this writ petition is dismissed. No costs.

NCC : Yes / No
Index : Yes / No
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M.JOTHIRAMAN, J.

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