

BEFORE THE ADDITIONAL LABOUR COURT, COIMBATORE

Present: ***Thiru. K. Arunachalam, M.A., M.L.,***
 Presiding Officer,
 Additional Labour Court,
 Coimbatore

Tuesday, the 25th day of March 2025

OP/ ID. No. 60/2023

(CNR No.TNCB-04-000150-2023)

Secretary,
Tamil Nadu Arasu Pokkuvarathu
Uliyar Sangam (CITU),
Tirupur.

. . . Petitioner

~ Versus ~

The Management,
Tamil Nadu State
Transport Corporation,
Coimbatore Region,
Zonal Office at Tirupur.

. . . Respondent

This Petition came up for final hearing before me on 7th of March 2025 in the presence of Thiru.B. Jothikumar, Learned counsel for the petitioner and Tmt. K.T.Kannika Sankareswari, Learned counsel for the Respondent. Upon perusing the entire case records and upon hearing the arguments of both sides, and having stood over for consideration till this date, this Court doth passed the following :-

PRELIMINARY AWARD

The petitioner seeks to set aside the impugned punishment of stoppage of increment for a period of two years with cumulative effect and to set aside the deduction of earned leave for a period from 04.10.2014 to 02.11.2014 from the leave account of the petitioner member and to disburse monetary benefits under section 2K of the Industrial Disputes Act, 1947.

2. Petition averments in brief :-

The petitioner trade union represents the cause of its aggrieved bus driver Mr S. Manivel. The industrial dispute was raised out of reference u/s 2K of the Industrial Disputes Act, 1947. The petitioner intends to challenge the impugned punishment of stoppage of increment for a period of two years with cumulative effect imposed upon its member Mr S. Manivel. It also challenges the proceedings dated 27.07.2016 in which the suspension period between the dates of 04.10.2014 to 02.11.2014 was ordered to be treated as leave and to be deducted consequently. The petitioner trade union is a registered trade union. It is meant for the welfare of the employees under the respondent bus corporation. The respondent bus corporation is headquartered at Coimbatore. More than thousand drivers and conductors are working under the respondent management. The driver Mr S. Manivel was issued a charge memo on 23.10.2014. He was charged with rash and negligent driving on the date of 02.10.2014 at about 8.25 am while he was proceeding from Mettupalayam to Theni

in his TN-38-N2866 Government bus. The bus allegedly hit the two wheeler in its right side. The two wheeler victim died at the hospital. The police registered an FIR against Mr S. Manivel. Meanwhile, the petitioner was also given show cause notice u/s 14(d) and (ad) of the Certified Standing Orders meant for the respondent management. Mr S. Manivel was also suspended on 04.10.2014. Mr S. Manivel submitted his reply on 03.10.2014. He would attribute the negligence on the part of the two wheeler victim and inspite of applying the brake, the two wheeler hit the bus and the accident happened, according to the petitioner member. The victim was immediately taken to Tirupur Government Hospital and he succumbed to injuries. His reply was not duly considered by the management. A detailed charge memo was issued on the date of 23.10.2014. Mr S. Manivel responded to the same on 06.11.2014 by way of reply. The respondent management ordered domestic enquiry in this matter. The inquiry proceeded one sided without considering the defence taken by Mr S. Manivel. The principles of natural justice were not followed. The petitioner member was not given due opportunities to contest his case. Finally, the petitioner member was found guilty of charges. The management issued a second show cause notice to Mr S. Manivel on 01.07.2016. He replied to the same on 12.07.2016. Subsequently, the management proceeded with the punishment of stoppage of increment for two years with cumulative effect as against the petitioner member. He was also imposed a deduction of 30 days earned leave from his credit in respect of his suspension period. Meanwhile, a criminal case in CC. No. 667 of 2017

ended in acquittal in favour of the petitioner member before the learned Judicial Magistrate No- III, Tirupur. The petitioner member requested for appeal by his letter dated 15.09.2020 which was not considered by the management. Hence the petitioner member raised an industrial dispute with the help of the petitioner trade union before the Conciliation Officer, Tirupur on 27.07.2016. The respondent was adamant in their stand. Hence the conciliation failed. The report was submitted to the Government of Tamil Nadu. The Government of Tamil Nadu referred the matter to this Court in TN. GO. MS. No. 530 of Labour Welfare and Skill Development (D1) Department dated 16.10.2023 by raising the issues as follows

"எழுவினா

மனுதாரர் திரு. S. மணிவேல், ஓட்டுநருக்கு (பணி எண். C23660) வருடாந்திர ஊதிய உயர்வை இரண்டு வருடங்களுக்குப் பின் தொடர்ச்சியுடன் தள்ளி வைத்து நிர்வாகம் பிறப்பித்த 27.07.2016 நாளிட்ட உத்தரவை ரத்து செய்திடவும் ஏற்கனவே தற்காலிக வேலை நீக்கம் செய்யப்பட்ட 04.10.2014 முதல் 02.11.2014 வரையுள்ள 30 நாட்களை பணி நாளாக கருதி ஊதியம் வழங்கிட வேண்டுமென்ற தொழிற்சங்கத்தின் கோரிக்கை நியாயமானது தானா? ஆம் எனில் உரிய உத்தரவுகள் பிறப்பிக்கவும்"

The petitioner member was given two punishments for the same charges. The stoppage of increment with cumulative effect is not a listed punishment under the Certified Standing Order. The petitioner member is suffering mentally as well as economically. The punishment is grossly disproportionate to the gravity of charges

involved. The petitioner member was victimized for his trade union activities in its affiliate of CITU. Hence the impugned punishment is liable to be set aside and the petitioner member is to be given monetary benefits. Hence this petition.

3. **Counter averments in brief :-**

The petition allegations are denied save those admitted. The petitioner member Mr S. Manivel was attached with Tirupur-1 branch as a driver. It is true that the petitioner member drove the government bus on the alleged date and time. But the petitioner member was rash and negligent in driving the bus and hit the two wheeler and the victim succumbed to injuries. The bus hit the two wheeler that was coming from the left to the right of the bus and the bus driver was only responsible for causing the accident. The management sustained damages worth Rs. 2,000/- and the two wheeler damages worth Rs. 1000/-. The petitioner member was charged with 14(a) and (ad) of the Certified Standing Order for causing the fatal accident. The delinquent did not reply to the charge memo dated 23.10.2014. The domestic enquiry was conducted in this regard. The petitioner member was found guilty of charges. The enquiry officer submitted his findings to the respondent corporation. The respondent management issued a second show cause notice on 20.05.2016. But the petitioner member did not choose to file his objections. Hence the findings were accepted by the management and the petitioner member was imposed the impugned

punishment of stoppage of increment. The petitioner member could have been given a stoppage of increment for three years with cumulative effect. But the administration was magnanimous and did not impose such a punishment. The petitioner member gave a reply on 12.07.2016. His reply was not found satisfactory. The management imposed a punishment of stoppage of increment for a period of two years with cumulative effect. The deduction of the suspension period as a leave period is not a punishment. It only saves the money of the petitioner member. The legal heirs of the victim filed MCOP case before the Motor Accident Claim Tribunal, Theni. The Tribunal awarded Rs. 10,80,000/- along with interest totalling Rs. 13,18,388/- as compensation. The management sustained loss due to the reckless act of the petitioner member. The management never intended to victimize the petitioner member at any point of time. The petitioner member has to be made accountable for the accident as well as loss sustained by the management. Hence the petition is liable to be dismissed.

4. Since the domestic enquiry is learnt to be conducted, the preliminary issues were framed as to fairness of domestic enquiry and as to the veracity of the findings of the enquiry officer. Both sides were heard. They have not adduced any oral evidence. Exhibits W1 to Ex. W9 were marked on the petitioner side by consent. No documents were marked on the side of the respondent.

5. The Court carefully considered the arguments advanced on both sides. Based on the averments, the preliminary issues were framed as follows :

Point for Determination:-

1. Whether the domestic enquiry conducted by the respondent management is fair and proper?
2. Whether the findings of the enquiry officer is biased or perverse?

6. Answer to Point No. 1 and 2 :-

The petitioner trade union represents the cause of its aggrieved member cum driver namely Mr S. Manivel. The petitioner challenged the impugned punishment of stoppage of increment for a period of two years and to nullify the crediting of suspension days as leave days and grant subsequent monetary benefits, u/s. 2K of the Industrial Disputes Act, 1947. The petitioner member was originally attached with Tirupur - 1 branch as a driver. The parties would agree that the accident took place on 02.10.2014 at about 08.25 pm near Thanthai Periyar colony while the bus bearing registration no. TN 38 N-2866 proceeded from Mettupalayam to Theni. The respondent would allege that the petitioner member had every opportunity to avoid the accident but he recklessly drove the bus on the extreme right and caused the accident. Per contra, the petitioner member would submit that he immediately stopped the bus upon seeing the two wheeler which was coming from cut road to

main road in a rash and negligent manner and that the two wheeler hit the front side of the bus and resulted in fatal accident on the fateful day. The petitioner was also learnt to be suspended on 04.10.2014. His suspension continued until 02.11.2014 and he rejoined duty subsequently. It is seen from the records that the respondent management issued Ex. W2 charge memo on 23.10.2014 attributing rash and negligent act on the part of the petitioner member u/s 14(a) and (ad) of the Certified Standing Order. The departmental official Mr. G. Shanmuga Sundaram was appointed as an Enquiry Officer in this matter. Ex. W3 is the findings of the enquiry officer. He found the petitioner member guilty of charges. The Court carefully considered the entire findings marked as Ex. W3. The enquiry officer is learnt to have submitted his explanation based on management side witness, MW1 - Nagendran who is Assistant Manager of the Erode branch. Admittedly, he is not the eye witness of the occurrence. An FIR was lodged by the police against the petitioner member. The enquiry proceeded to examine Mr S. Manivel as delinquent witness and he concluded that the accident took place only due to the negligent act of Mr. S. Manivel. The findings of the enquiry officer relied upon the fact that the petitioner member did not show due diligence in avoiding the accident by slowing down the bus or turning on the left side. Mr. Manivel would defend that the two wheeler recklessly entered from cut road to main road without noticing the bus and that he was compelled to stop the bus but the two wheeler lost his balance and hit the bus resulting in a gruesome accident. The learned counsel for the petitioner would

also rely upon Ex. W8 judgment rendered by Judicial Magistrate No. III, Tirupur in CC. No. 667 of 2017 acquitting the delinquent from all the charges. On careful scrutiny of Ex. W8 judgment, the testimony of the impugned eye witness PW1 Muniyandi was an unreliable eyewitness to the occurrence and his evidence was outrightly rejected by the criminal court and the testimony of other eyewitnesses were also discarded as hearsay witnesses. Accordingly, the benefit of doubt was given to the delinquent and he was ultimately acquitted. Ex.W8 judgment was delivered on the date of 25.11.2019. The learned counsel for the petitioner would submit that though the standard of proof is differently required in a criminal case, his acquittal should have been considered prima facie during the litmus test of the domestic enquiry. The petitioner would further submit that the enquiry officer did not proceed to examine the relevant eye witness to the occurrence. It is true that the entire findings is based upon the testimony of the official witness namely Mr. L. Nagendran, attached with the Erode office. Either the pedestrians or the passengers of the bus were not examined to ascertain the nature of the accident. Even the enquiry officer did not care to record the statement of the bus conductor. The specific case of the petitioner member is that upon noticing the entry of the two wheeler from cut road to main road, he immediately stopped the bus but the victim uncontrollably hit the front right of the bus resulting in the latter's death. Hence it is the clear case of the petitioner member that he did not notice the two wheeler. It is not disputed that the two wheeler came from cut road to main road. In the considered

circumstances, the prima facie negligence is also to be held as against the two wheeler, as alleged by the petitioner member. Further the error of the judgment by the bus driver could not be interpreted as a departmental guilt to couch the delinquent with charges. More importantly, without ascertaining the nature of the accident by causing production of the relevant witness, the enquiry officer should not have concluded that the petitioner member was solely at fault in causing the accident. The opinion given by the finding officer that the bus should have gone to the left side or he should have given extra space from the right side bears no relevance to test the gravity of charges. The opinion given by the enquiry officer would reveal that though the two wheeler victim was negligent, the bus driver should have taken more care and caution in order to avoid the accident. The findings of the enquiry officer is totally based on surmises and conjectures without contesting the ground level reality. The enquiry officer proceeded to record the guilt of the delinquent on the basis of the tailored report of the official witness Mr. L. Nagendran. However, the petitioner member finds no procedural irregularity over the conduction of the domestic enquiry. The neutrality of the enquiry officer was also not questioned by the petitioner member. Hence the Court feels no hesitant to hold that there is no procedural irregularity in conducting the inquiry. But the Court seriously considers the fact that the findings of the enquiry officer suffers from bias and perversity since the observations made by the enquiry officer with respect to the accident are totally opinionated and not based on proof of evidence. Accordingly, the Court hereby holds

that though there is no procedural irregularity, the domestic inquiry stands vitiated in view of the biased and perverse approach found in the findings of the enquiry officer. These points are answered accordingly.

7. **In the result**, the preliminary award is passed as follows:

1). The domestic enquiry conducted by the respondent management is fair and proper.

2). The domestic enquiry is held vitiated since the findings of the enquiry officer is hit by bias and perversity.

For further proceedings under Section 11(A) of ID Act. Call on 30.04.2025.

(Dictated to the Steno Typist, Transcribed by her, Corrected and Pronounced by me, on this, Tuesday, the 25th day of March 2025)

**PRESIDING OFFICER,
ADDITIONAL LABOUR COURT,
COIMBATORE.**

LIST OF WITNESSES EXAMINED

For Petitioner Side : Nil

For Respondent Side : Nil

LIST OF EXHIBITS MARKED.**For Petitioner side :-**

Exhibits	Documents	Date	Remarks
Exhibits	Documents	Date	Remarks
Ex.W 1	Petitioner sent a letter to the branch manager	03.10.2014	Xerox
Ex.W 2	Charge memo issued by the management	23.10.2014	Xerox
Ex.W 3	Findings of the enquiry officer	20.05.2016	Xerox
Ex.W 4	Notice issued by the management	01.07.2016	Xerox
Ex.W 5	Letter sent by the petitioner to the General Manager	12.07.2016	Xerox
Ex.W 6	Order issued by the management	27.07.2016	Xerox
Ex.W 7	Letter sent by the petitioner to the Managing Director	-	Xerox
Ex.W 8	Copy of Judgment in CC. No. 667/2017 by JM-III, Tirupur	-	Xerox
Ex.W 9	Petitioner's appeal petition before the Managing Director	15.09.2020	Xerox

For Respondent side :- Nil

**PRESIDING OFFICER,
ADDITIONAL LABOUR COURT,
COIMBATORE**

Fair/Draft
Preliminary Award
in OP 60/2023
Dt : 25.03.2025
ALC, CBE