

BEFORE THE ADDITIONAL LABOUR COURT, COIMBATORE

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

Wednesday, the 12th day of February 2025

OP/ ID. No. 67/2023

(CNR No.TNCB-04-000169-2023)

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

... Petitioner

~ Versus ~

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

... Respondent

This Petition came up for final hearing before me on 29th of January 2024 in the presence of Thiru. B. Jothikumar, Learned Advocate for the Petitioner and Tmt.K.T. Kannikasankareswari, Learned Advocate for the Respondent. Upon perusing the Petition, Counter and other documents, 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 of 30 days from the 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 petition arises out of reference u/s 2K of the Industrial Disputes Act, 1947. The petitioner trade union represents the cause of the aggrieved bus driver namely. Mr. P. Palani. The reference is based upon TN GO. MS. No. 615 of the Labour Welfare and Skill Development (D1) Department dated 17.11.2023. The aggrieved bus driver Palani was imposed with a punishment of stoppage of increment for a period of two years with cumulative effect and his suspension period between the dates of 12th of March 2019 to 10th of April 2019 for a period of 30 days was also ordered to be treated as leave days by way of deduction of Earned Leave Account. The respondent is the Government Bus Corporation headquartered at Coimbatore. More than 1000 employees are working under the respondent

corporation. The employer-employee relationship is governed by Certified Standing Orders. The aggrieved driver Mr. P. Palani was issued a charge memo on 9th of April 2019. He was charged for rash and negligent driving of the bus resulting in a fatal accident. The said accident took place on 10.03.2019 at about 09.30 p.m. The bus was proceeding from Sathyamangalam to Tirupur. The accident took place near Thandukarampalayam Kollanthottam. The bus hit a cyclist and he was critically injured. The victim was taken to Avinashi Government hospital; he was declared dead at 10.20 pm. The police registered an FIR against the bus driver Mr. P. Palani. The accident report was filed by the departmental official. Accordingly, the petitioner member was charged for rash and negligent driving u/s 14(d) and 14 (ad) of the Certified Standing Orders. The petitioner member was given show cause notice before taking disciplinary action. The petitioner was also suspended with effect from the date of 12th of March 2019. The petitioner member submitted his reply on the same day of 12th of March 2019. As per his reply, the cyclist erroneously crossed the road and the bus was halted upon seeing the cycle. The cyclist hit the right side of the bus uncontrollably and he sustained head injury. The victim was taken by way of 108 ambulance. Subsequently, he was declared dead. The accident entirely took place due to the negligence of the cyclist. The bus was halted immediately. The bus driver cannot be held responsible for the accident. His reply was not considered by the management. A domestic enquiry was ordered in this regard. The enquiry was not conducted fairly and properly. The principles of

natural justice were not followed in conducting the enquiry. The listed witnesses were not the proper witness. The witnesses on the side of the petitioner member were not cross examined by the management. No opportunities were granted to the petitioner member. The enquiry officer wrongly recorded guilt as against the petitioner member at proceeding the findings. The management issued a second show cause notice to the petitioner member on 7th of May 2020. The petitioner member submitted his reply on 12th of June 2020. His reply was not considered. Subsequently, the petitioner member was imposed with a punishment of stoppage of increment for a period of two years with cumulative effect. His suspension period between the date of 12th of March 2019 to 10th of April 2019 for a period of 30 days was also ordered to be treated as leave period. The said order was passed on the date of 19th of June 2020. The petitioner member preferred an appeal on 15th of September 2020 against the said order. The departmental appeal was dismissed on 7th of November 2020 without considering the plea of the petitioner member. Hence the petitioner member raised an industrial dispute through his trade union under Na. Ka. No. 484 of 2021 u/s 2K of the Industrial Disputes Act, 1947. The conciliation failed and the failure report was filed by the Conciliation Officer, Tirupur. Subsequently, the dispute was referred to the Government of Tamil Nadu. Then the matter was referred to this Court for answering the queries involved in GO referred above. The records submitted by the petitioner member were not considered. His explanations were also not duly considered by the enquiry officer. No eye witnesses were

examined to ascertain the truth. No copies of the inquiry findings were served to the petitioner member. The domestic enquiry was not conducted fairly and properly. The evidence of the management was formally followed up by the enquiry officer without applying the mind. His findings were biased and perverse. The petitioner member's suspension period was illegally treated as leave period and his earned leave was consequently deducted. The petitioner member faced double jeopardy under the hands of the respondent management for no reasons. The management imposed the punishment which is not stated in the Certified Standing Orders. Hence the punishment is liable to be set aside. The petitioner member was suffering mentally as well as economically. The stoppage of increment for 2 years with cumulative effect has resulted in huge monetary loss to the petitioner member as well as his family members. The petitioner member is a member of CITU. Hence he was victimized by the management by making use of the unfortunate accident. Hence the domestic enquiry is liable to be held vitiated for want of merits. Hence the reference to be answered in favour of the petitioner member. Hence this petition.

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

The petition allegations are denied save those admitted. The petitioner member is attached with Tirupur-1 branch as a driver. Mr. P. Palani has faced a domestic enquiry due to rash and negligent act. He was imposed a punishment of

stoppage of increment for a period of two years with cumulative effect by order dated 19th of June 2020. His suspension period for a period of 30 days between 12th of March 2019 to 10th of April 2019 was ordered to be deducted from his earned leave. The petitioner member was fully responsible for causing the fatal accident. He drove the bus rashly and negligently and hit the cyclist and caused death to the victim on the alleged date of 10th of March 2019. The bus was also damaged worth Rs. 7,000/-. The police registered an FIR against the petitioner member. The petitioner member did not follow the traffic rules and caused death to the victim by his rash and negligent driving. Hence he was charged u/s 14(a)(ad) of the Certified Standing Orders. The petitioner member was issued a charge memo on 9th of April 2019. His reply was unsatisfactory. An enquiry officer was appointed in this regard. The domestic enquiry was conducted in this matter. The inquiry was contested on merits. The enquiry officer ultimately found the petitioner member guilty of charges. Then the petitioner member was given a notice on 11th of February 2020. His reply dated 15th of February 2020 was found to be unsatisfactory. The petitioner member was originally intended to be imposed a punishment of stoppage of increment for a period of 3 years with cumulative effect. He was accordingly issued a second show cause notice on 7th of May 2020. The petitioner member submitted his reply on 12th of June 2020. The management mercifully considered the plea of the petitioner member and imposed punishment of stoppage of increment only for a period of 2 years with cumulative effect. The suspension period between 12th of March 2019 and 10th of

April 2019 for a period of 30 days was ordered to be treated as leave period and got deducted from the earned leave rightly. Further, the petitioner member was cautioned not to indulge in any similar accident. The Hon'ble High Court of Madras has held in similar cases that the punishment of imposition of stoppage of increment is perfectly valid. The petitioner member was given an opportunity to appeal within a period of 60 days. The petitioner member also filed an appeal in reference no. 1/G5/தமிழ்நாடு/2019 dated 07.11.2020 in which his appeal was also found rejected. The respondent never intended to victimize the petitioner member at any point of time. The petitioner member was fully accountable for the fatal accident. He did not follow traffic rules. He hit the cyclist and the management was given the responsibility of disbursing compensation in favour of the legal heirs of the victim. Hence this 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 M1 to M3 were marked on the side of the respondent by consent.

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 :-

The reference is raised under section 2K of the Industrial Disputes Act, 1947. The petitioner trade union represents the cause of its aggrieved member namely Mr. P. Palani who is the Driver attached with Tirupur-1 branch. The employer employee relationship is not disputed. The respondent is a Government bus corporation headquartered at Coimbatore. His alleged fatal accident occurred on 10.03.2019 at about 09.30 p.m near Thandukarampalayam Kollanthottam. The bus was originally proceeding from Sathyamangalam to Tirupur. The bus allegedly hit the cyclist and caused a fatal accident, according to the management. The petitioner would submit that the cyclist negligently crossed the road and the bus was halted but the cyclist uncontrollably hit the right side of the bus resulting in head injury. The cyclist was declared dead by the Avinashi Government hospital by around 10.20 p.m. The fatal death is not disputed. The management would submit that the bus was also damaged worth Rs. 7,000/-. The petitioner member is learnt to be suspended with effect from the date of 12th of March 2019. His suspension continued until the date of 10th of April 2019 as per records. The management has given show cause notice on the basis of the accident report filed by the department official. The said accident report was

not produced before this Court to ascertain the crime. The management would also submit that an FIR was also filed against the bus driver Mr. P. Palani. But the said FIR copy was also not produced before this Court to consider the ingredients of the charges. The fate of the criminal case was also not narrated before this Court on either side. The petitioner would submit that no independent witnesses were examined by the enquiry officer in this matter and that the domestic enquiry was not conducted fairly and properly. Ex. M3 is the findings given by the enquiry officer in this regard. The Superintendent of the respondent namely Mr. P. Sonaimuthu was appointed as an enquiry officer. The petitioner member was charged rash and negligent driving u/s 14(a)(ad) of the Certified Standing Orders. The neutrality of the enquiry officer is not seriously disputed by the petitioner. It is further seen from the records that Mr. P. Palani appeared before the enquiry officer on the dates of 10.10.2019 and 25.11.2019. Mr. Gunasekaran, Branch Manager, Tirupur was examined on the side of the management. The petitioner is learnt to have represented no need for observers on his side in the course of inquiry. This fact is also not disputed. Then the charges were stated to be read over to the petitioner member and the enquiry is learnt to be taken up by examining witnesses on both sides. It is seen from the findings in Ex. M3 that records such as detailed accident report, Accident Inspection Report, Rough Sketch of the Accident place, FIR copy, Statement of the Driver and Conductor along with charge memo were considered. But all the listed records were not submitted by the management before this court for the reasons best

known to them. Hence this Court is not in a position to ascertain whether these records were duly considered by the enquiry officer at the time of domestic enquiry, as claimed. Without submitting the entire records, this Court cannot be expected to validate the procedural fairness of the domestic enquiry. The petitioner would submit that the enquiry proceedings were not duly served to the petitioner member. Further, the statement of the eye witnesses were also not learnt to be recorded by the enquiry officer to ascertain the truth. Even the conductor of the bus has not been produced as a witness before the enquiry officer. No eye witnesses were examined in this regard. No bus passengers were also not examined by the enquiry officer. In the considered circumstances, the arrival of guilt as against the petitioner driver by the enquiry officer cannot be termed to be a meritorious consideration. Without producing the entire records, the Court cannot be convinced that the domestic inquiry was conducted fairly and properly by adhering to the principles of natural justice. Accordingly, this Court is of the considered view that the enquiry cannot be termed to be conducted fairly and properly by any stretch of probability. Accordingly, issue no. 1 is answered in favour of the petitioner.

7. Answer to Point No. 2 :-

The petitioner would submit that the findings of the enquiry officer suffered from bias and perversity. The petitioner member Mr. P. Palani was found guilty of rash and negligent driving u/s 14(a)(ad) of the Certified Standing Orders. The

enquiry officer would give a reason that the bus was not halted at the time of accident which had resulted in hitting the cycle and the cyclist was thrown away resulting in head injury. The enquiry officer would further add that the driver did not have the control over the bus in spite of it being a dark night. But the enquiry officer was also observed as follows : -

“அதே நேரத்தில் சைக்கிளோட்டியும் இரவு நேரத்தில் தனக்கு இடதுபுறம் செல்லாமல், தவறான பாதையில் வந்துள்ளதும் விபத்திற்கு ஒரு காரணமாகிவிட்டதும் மறுப்பதற்கில்லை”

The enquiry officer went on to observe that the delinquent driver did not produce any sufficient records to refute the allegations. The observations given by the enquiry officer are not convincing. The burden is entirely upon the prosecution to prove the rash and negligent act on the side of the bus driver. The bus driver cannot be held guilty by compelling him to produce sufficient documents and evidence on his side without any legal basis. The evidence on the side of the petitioner member is only to ascertain the accident involved. After admitting negligence on the side of the cyclist by coming on the wrong side, the negligence cannot be fully attributed as against the bus driver. Being the department officer, the court is of the apprehension whether the enquiry officer concluded the report in support of the management by entirely blaming the bus driver, without merits. It is also seen from the records that the bus suffered a damage of worth Rs. 7,000/-. The legal heirs of the victim should have preferred an accident claim before the appropriate Court though no records were

produced on either side to ascertain the fact. The petitioner would submit that the punishment was not given in accordance with the standing order. The petitioner would further submit that Mr. P. Palani was a member of CITU which had landed him in trouble since the management took advantage of the fatal accident which caused monetary suffering by way of punishment. It is needless to say that the merits of the punishment could not be tested at the time of passing the preliminary award. As discussed earlier, it is categorically clear that the petitioner member Mr. P. Palani should not be squarely blamed for the impugned accident. The reasons given by the enquiry officer are not fully supported by evidence and records. Further, no domestic enquiry records are also not submitted before this Court to fully consider the merits over the findings of the domestic enquiry officer. In the considered circumstances, the case projected by the petitioner that the findings of the enquiry officer suffered from bias and perversity, appears to be logical and justified. In the considered circumstances, this Court can safely hold that the domestic enquiry is held vitiated on merits.

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

1). The domestic enquiry conducted by the respondent management is not fair and proper.

2). The domestic enquiry is held vitiated as biased and perverse.

For further proceedings under Section 11(A) of ID Act. Call on 13.03.2025.

*(Dictated to the Steno Typist, Transcribed by her, Corrected and Pronounced
by me, on this, Wednesday, the 12th day of February 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 :- Nil

For Respondent side :-

Exhibits	Documents	Date	Remarks
Ex.M 1	Proceedings of the enquiry report	-	Xerox
Ex.M 2	Order of the respondent management	19.06.2020	Xerox
Ex.M 3	Enquiry officer report	19.12.2019	Xerox

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

**Fair/Draft
Preliminary Award
in OP 67/2023
Dt : 12.02.2025
ALC, CBE**