

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

WRIT PETITION No.18442 of 2003

ORDER:

This Writ Petition is filed questioning the Award dt.23-09-2002 in I.D.No.105 of 2002 of the Industrial Tribunal-II, Hyderabad.

2. Heard Sri G.Ravi Mohan, learned counsel for petitioner, learned Government Pleader for Revenue for 1st respondent and Sri N.Vasudeva Reddy, learned Standing Counsel for respondent Nos.2 and 3.

3. The petitioner was employed as Driver in the Andhra Pradesh State Road Transport Corporation (for short 'the Corporation'). While he was operating a bus belonging to the Corporation, an accident occurred at Kadthal at 13.10 hours on 23-12-1990. The front bumper of the vehicle being driven by petitioner hit a boy aged 9 years and the rear left side tyre passed on the head of the boy and he died on the spot due to crushing of his head.

4. The petitioner was prosecuted under Section 304-A IPC in C.C.No.99 of 1991 before the Judicial First Class Magistrate, Kalwakurthy. The said prosecution ended in acquittal on the ground that the witnesses for prosecution turned hostile and did not

support the prosecution case.

5. A domestic enquiry was conducted against petitioner by issuing charge sheet dt.19-01-1991 with the following charges:

"i. For having driven the vehicle No.AP-9Z-1542 on 23-12-1990 on route Hyderabad Midjil at 13.10 hours, in rash and negligent manner resulting in an accident and death of pedestrian Sri Sreenu (Chakati) aged 9 years, S/o.Chakati Satyanarayana, R/o.Kadhal, Mandal Kadthal, District Mahaboobnagar which constitutes misconduct under Reg.28(ix)(a) of APSRTC Employee's (Conduct) Reg.1963.

ii. For your lack of anticipation while driving vehicle No.AP-9Z-1542 in rash and negligent manner which resulted in the fatal accident which constitutes misconduct under REg.28(ix)(a) of APSRTC Employee's (Conduct) Reg.1963".

6. The Enquiry Officer recorded the statements of witnesses and then, on the basis of appreciation of evidence, submitted an enquiry report that petitioner is guilty of the charges framed.

7. The said enquiry report was considered by the Management of the Corporation and show cause notice was issued to petitioner on 10-05-1991 proposing punishment of removal of the above proved misconduct.

8. After receiving petitioner's reply, punishment of removal from service was imposed on petitioner from the Corporation.

9. This was challenged in appeal by him

before the Divisional Manager, APSRTC, Rangareddy Division on 10-07-1991 and it was rejected on 13-01-1992. His Review petition before the Review Authority i.e. Regional Manager, Medak Region was also rejected on 29-03-1996.

10. The petitioner then approached the Industrial Tribunal-II, Hyderabad under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short 'the Act').

11. By an Award dt.23-09-2002, the Tribunal confirmed the finding of guilt against petitioner as recorded by the Enquiry Officer in the domestic enquiry, but however, exercised power under Section 11-A of the Act on the issue of proportionality of punishment and substituted the removal order with an order of reinstatement of petitioner into service with continuity of service but without back wages and also withholding 2 annual increments cumulatively.

12. Questioning the same, this Writ Petition is filed.

13. The learned counsel for petitioner contended that the Tribunal had erred in depriving the petitioner of back wages, attendant benefits and also erred in directing the Corporation to withhold 2 annual increments cumulatively; the power under Section 11-A of the Act has not been properly exercised by the Tribunal;

and that the said punishment is disproportionate to the proved misconduct. He therefore contended that this Court should grant back wages and attendant benefits to petitioner and also set aside the punishment imposed by the Tribunal of withholding 2 annual increments cumulatively.

14. The learned counsel for respondent Nos.2 and 3-Corporation, on the other hand, contended that misplaced sympathy should not be shown to petitioner and when the driver of a heavy vehicle such as a bus belonging to the Public Transport Corporation does not act in a manner to ensure public safety and convenience, lenience should not be shown. He also contended that the findings in the criminal case would have no relevance at all as far as the domestic enquiry is concerned, and that the judgment of criminal Court is not binding. It is further contended that the petitioner had accepted correctness of the Award, reported to duty and he was reinstated into service by order dt.10-02-2003 and so he is estopped from questioning the impugned Award to the extent it went against him. Learned counsel for respondent has relied upon **State of Punjab and Others Vs. Krishan Niwas**^[1] and other decisions in this regard.

15. I have noted the submissions of both counsel.

16. The petitioner is not assailing the finding in domestic enquiry, which was also accepted by the Industrial Tribunal, that the petitioner had acted negligently and caused the death of the boy in question. That finding has attained finality. Therefore, what transpired in the criminal Court is irrelevant.

17. The question is “whether for the said proved misconduct, can this Court grant him relief of back wages and attendant benefits which have been denied by the Tribunal and give him back 2 annual increments with cumulative effect which have been withheld by the Tribunal?”

18. It is settled law that under Section 11-A of the Act, an Industrial Tribunal can go into the issue of proportionality of punishment and substitute or modify any punishment imposed by the Management if it feels that punishment imposed is disproportionate to the proved misconduct.

19. The power under Section 11-A of the Act can be exercised by the Labour Court or Industrial Tribunal to interfere with the quantum of punishment, but the said discretion has to be used judiciously and not capriciously. Harsh punishment wholly disproportionate to the charge should be the criterion for interference. (J.K. Synthetics Ltd. Vs. K.P.Agrawal and another^[2], Bharat

**Forge Co. Ltd. Vs. Uttam Manohar Nakate^[3], M.P.
Electricity Board Vs. Jagdish Chandra Sharma^[4] and
Regional Manager, Rajasthan SRTC Vs. Ghanshyam
Sharma^[5]).**

20. In the present case, the Tribunal had felt that the punishment of removal imposed by respondents-Corporation on the petitioner is disproportionate to the proved misconduct and interest of justice would be served if the petitioner is reinstated into service without back wages and attendant benefits but with continuity of service and by withholding 2 annual increments cumulatively.

21. I am of the opinion that the Tribunal had rightly exercised its discretion under Section 11-A of the Act. If the back wages, attendant benefits and two annual increments cumulatively are also granted apart from reinstatement, there would be no meaning in finding him guilty in the domestic enquiry and it would amount to exonerating him totally from the misconduct found proved in the enquiry.

22. Considering the gravity of the misconduct found proved against the petitioner, I do not found any error apparent on the face of record in the order passed by the Tribunal warranting interference by this Court in exercise of its jurisdiction under Article 226 of the

Constitution of India.

23. Therefore, I do not find any merit in the Writ Petition and the same is accordingly dismissed. No costs.

24. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 13-02-2015

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[\[1\]](#) AIR 1997 SC 2349

[\[2\]](#) (2007) 2 SCC 433

[\[3\]](#) (2005) 2 SCC 489

[\[4\]](#) (2005) 3 SCC 401

[\[5\]](#) (2002) 10 SCC 330