

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION No.25898 of 2005

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Between:

N.Thaniklas

...Petitioner

and

The Industrial Tribunal-I and others

...Respondents

DATE OF JUDGMENT PRONOUNCED: 06.10.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? Yes/No

2. Whether the copies of judgment
may be marked to Law Reporters/Journals? Yes/No

3. Whether Their Ladyship/Lordship wish to

see the fair copy of the Judgment? Yes/No

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION No.25898 of 2005

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ORDER:

This Writ Petition was filed by a driver in the service of the Andhra Pradesh State Road Transport Corporation (APSRTC) assailing the Award dated 30.06.2004 passed by the Industrial Tribunal at Hyderabad in I.D.No.5 of 2001, insofar as it denied him the relief of restoring his original basic pay, back wages and other attendant

benefits.

The petitioner was subjected to disciplinary proceedings in connection with an accident which occurred on 14.02.1992 while he was driving bus No.AAZ 4141 on the route Suraram to Sanathnagar, whereby some of the passengers were injured and the vehicle sustained damage. In consequence, he was removed from service by order dated 15.07.1992. However, in appeal before the Divisional Manager, APSRTC, Sanathnagar Division, the punishment was reduced to reinstatement of the petitioner - driver in service as a fresh appointee. This reduced punishment was the subject matter of reference before the Industrial Tribunal under Section 10 of the Industrial Disputes Act, 1947. The Tribunal took into account the statements made by the Conductor, a passenger and eye-witnesses which disclosed that the petitioner - driver stopped the bus for a passenger to board near the turning and thereafter, when the bus moved, a cyclist came from the opposite direction and the petitioner - driver applied the brakes but could not control the bus and thereafter it went off the road into the field. The Tribunal therefore concluded that the accident had occurred due to the sudden application of the brakes by the petitioner - driver so as to avoid the cyclist coming from the opposite direction and not due to rash and negligent driving.

So far as the damage to the vehicle was concerned, the Tribunal found that only the body had sustained damage and not the engine. The Tribunal further found that a report had been given by the Traffic Superintendent that the vehicle be recommended for premature scrap without substantiating the reason therefor. Having observed so, the Tribunal opined that if the vehicle was faulty, the petitioner - driver should have taken necessary precautions and he was therefore negligent in this regard. The direction of the appellate authority requiring the petitioner to furnish a fresh security deposit was however set aside by the Tribunal and the reference was

answered holding that his seniority could be counted from the date of his original appointment and not from the date of his rejoining but he would continue to draw the scale of pay as fixed from the date of his reinstatement and the period between the date of his removal and the date of rejoining should be treated as 'not on duty'.

The finding of the Tribunal that the petitioner - driver was negligent is not tenable. It was nobody's case that the brakes had failed or that the bus was faulty in any manner. According to the petitioner - driver, the track on which the bus was moving was narrow and owing to the sudden application of brakes to avoid the cyclist, he could not control the vehicle and it therefore went off the road into the field. This was a pure and simple accident and the question of any negligence on the part of the petitioner – driver in maintaining the vehicle did not arise. However, as he was the driver of the vehicle, he necessarily had to take sufficient precautions to avoid such accidents. This carelessness on his part, no doubt, warranted some level of punishment but the appellate authority, while directing his reinstatement, visited multiple punishments upon the petitioner. On one hand, he was to be appointed as a fresh driver, thereby wiping out his past service for all purposes; secondly, his pay was to be fixed at the minimum scale of a Driver Grade II and; thirdly, he was denied the benefit of service between the date of his removal and the date of his rejoining, as the same was to be treated as 'not on duty'.

Circular No.PD-97/1988 dated 20.09.1988 issued by the Vice-Chairman and Managing Director of the APSRTC provides that punishments like deferment of increments for more than 2 years or reduction in pay by more than 2 stages should not be imposed as a matter of routine and if an offence is proved on the part of an employee, deferment of increment for more than 2 years or reduction in pay by more than 2 incremental stages should not be imposed in a single case. This Circular therefore prohibited multiple punishments

being imposed in a single case. However, the Circular was completely ignored while dealing with the case of the petitioner.

It is now stated that the petitioner - driver has retired from service.

Keeping in view the afore-stated facts and the position obtaining under the Circular dated 20.09.1988, the petitioner is held entitled to the benefit of continuity of service from the date of his original appointment in the year 1984 for the purpose of reckoning his retirement and pensionary benefits. In this regard, he shall also be extended notional attendant benefits i.e. annual increments. The retirement and pensionary benefits shall be worked out in terms of this order and shall be remitted to the petitioner within two months from the date of receipt of a copy of this order. He shall however not be entitled to any monetary benefits on the basis of the attendant benefits granted by way of this order during the period that he remained in service. The Award passed by the Tribunal shall stand modified to this extent.

The Writ Petition is accordingly allowed in part.

Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

6th OCTOBER, 2015.

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