

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No. 5695 of 2010

Order:

The first respondent herein was initially engaged as a casual driver in the petitioner-Corporation on daily wages with effect from 11.11.1988 and his services were regularized with effect from 01.07.1990. He was removed from service on 16.09.1992 for causing fatal accident, but he was reinstated as fresh driver consequent to the orders passed by the reviewing authority. While so, when he was driving the bus bearing registration No. AEZ – 5993 on 06.09.2003 on route No.115 from Koti to Uppal he caused fatal accident at 20.20 Hours involving a Cyclist who was proceeding on the same direction as that of the bus. The Traffic Inspector attended the accident spot, drawn rough sketch of the accident and the same was attested by the first respondent. A preliminary enquiry was conducted by the Senior Traffic Inspector and he submitted his report holding that a *prima facie* case exists against the first respondent. He was suspended from the service and a charge sheet was issued on 30.09.2003. The first respondent submitted his explanation. Since the explanation submitted by the first respondent was not satisfactory, a domestic enquiry was ordered. The Enquiry Officer submitted his report holding that the charges framed against the first respondent were proved. The copy of enquiry report was furnished to the first respondent for his comments, vide letter dated 13.01.2004. The first respondent submitted his comments. Thereafter, a show cause notice of removal from service was issued on 11.02.2004. After considering the explanation submitted by the first respondent, an order of removal from service was passed on 03.03.2004. The appeal preferred against the said order by the first respondent was rejected by the Divisional Manager on 15.07.2004. The review to the Regional Manager also failed. The first respondent approached the second respondent by

filing ID No.95 of 2005, and the Labour Court, by its award dated 29.06.2009, set aside the order of removal from service and ordered reinstatement of the first respondent into service with continuity of service and payment of 75% of back wages. Challenging the same, the petitioner-Corporation filed the present Writ Petition.

2. The charges framed by the petitioner-Corporation against the first respondent are as follows.

“(i) For having driven the bus No.AEZ 5993 on 06.09.2003 in a rash and negligent manner and hit Sri Shakeel cyclist, aged about 32 years, causing in death of him, which constitutes misconduct under Regulation 28(ix)(b) of APSRTC Employees (Conduct) Regulations, 1963.

(ii) For having failed to take precautionary measures while driving the bus AEZ 5993 on 06.09.2003 at Amberpet where traffic is more, resulting in fatal accident which constitutes misconduct under Regulation 28(xxxii) of APSRTC Employees (Conduct) Regulations, 1963.”

3. A domestic enquiry was conducted and the Enquiry Officer submitted his report holding that the charges levelled against the first respondent were proved. After giving due opportunity to the first respondent, an order of removal was passed on 03.03.2004. As stated above, challenging the order of removal, the first respondent filed an appeal and review and after dismissal of appeal and review he approached the Labour Court in ID No.95 of 2005. The Labour Court framed the following points for consideration.

“1. Whether the domestic enquiry officer and the respondent were justified in holding that the petitioner was guilty under the charges leveled against him?

2. Whether the punishment of removal from service imposed against the petitioner was appropriate?

3. To what relief?”

4. The Labour Court, ultimately, held that the benefit of doubt must

go in favour of the petitioner/first respondent herein and held that there was no material before the domestic enquiry officer as well as the petitioner-Corporation to say that the first respondent herein was guilty under the charges levelled against him. The observations of the Labour Court are as follows.

“On behalf of the management no direct witness to the accident was examined. The evidence of Sri J. Ravinder Reddy which was adduced on behalf of the management was a hearsay evidence and it carries no weight. The evidence of service conductor also hearsay evidence. The hear say evidence of the service conductor also show that a three wheeler auto dashed a cyclist and the cyclist lost control and fell down before the bus leading to the accident. His evidence was impliedly to say that the petitioner was not guilty of rash and negligent driving. One Mohd. Jahangir was examined on behalf of the petitioner. The said Jahangir according to the petitioner was examined by the preliminary enquiry officer. The said Jahangir deposed before the enquiry officer that the accident was not due to the rash and negligent driving of the bus by the petitioner. The evidence was not accepted by the domestic enquiry officer as well as respondent on the ground that the father's name of the said witness was not tallied with the fathers name noted at the time of preliminary enquiry and as such his evidence was rejected. The enquiry officer as well as the respondent failed to enquire in detail, whether the very same Mohd. Jahangir who gave evidence at the time of preliminary enquiry gave evidence before the domestic enquiry officer. It was not the stand of domestic enquiry officer that Mohd. Jahangir was not the very same person who deposed before the preliminary enquiry officer. In such circumstances the stand of the domestic enquiry officer that the evidence of Mohd. Jahangir was not accepted because the name of his father shown as different when compared to his statement before the preliminary enquiry officer cannot be accepted. There may be possibility of mistaken recording of the name of the father of Mohd. Jahangir at the time of preliminary enquiry, before preliminary enquiry officer. The respondents were

expected to elicit information to say whether the Mohd. Jahangir who gave statement before the domestic enquiry officer was one and the same who gave evidence before the domestic enquiry officer. It was not done. In such circumstances the benefit of doubt must go in favour of the petitioner. So considering the above circumstances there exist no material for the domestic enquiry officer as well as the first respondent to say that the petitioner was guilty under the charge leveled against him. Hence there was no justification in holding that the petitioner was guilty under the charges leveled against him by the domestic enquiry officer and also by the respondent.”

5. The Labour Court, accordingly, modified the punishment of removal from service dated 03.03.2004 and directed the petitioner authorities to reinstate the first respondent into service with continuity of service and 75% of back wages.

6. No material is placed before this Court to challenge the said finding recorded by the Labour Court except filing a copy of the award. This Court cannot disturb the findings of fact recorded by a fact finding Labour Court which scrutinized the report of the Enquiry Officer. However, since the Labour Court gave only benefit of doubt, this Court feels that payment of 75% of back wages from the date of removal on 03.03.2004 to the date of award on 29.06.2009 would not be justified. In the circumstances, this Court thinks that it would meet the ends of justice if the award of the Labour Court is modified only to the extent of reducing the payment of back wages from 75% to 50%.

7. Accordingly, the Writ Petition is partly allowed by modifying the award of the Labour Court, dated 29.06.2009, and directing the petitioner-Corporation to reinstate the first respondent into service with continuity of service, which was already done, with payment of 50% of back wages instead of 75% of back wages as awarded by the Tribunal. There shall be no order as to costs.

8. This Court, at the time of admission, recorded that the first respondent was already reinstated into service pursuant to the award and the payment of back wages alone was stayed. In the circumstances, the petitioner-Corporation shall pay 50% of back wages to the first respondent instead of 75% of back wages pursuant to the award of the Labour Court dated 29.06.2009.

9. As a sequel thereto, the miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

A.
Date: 23.03.2016
Nsr

RAMALINGESWARA RAO, J.