

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND**

THE HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT APPEAL No. 65 OF 2016

J U D G M E N T : *(per Hon'ble Sri Justice Nooty Ramamohana Rao)*

This Writ Appeal is preferred by the Andhra Pradesh State Road Transport Corporation calling in question the correctness of the order passed by our learned Brother Justice R. Kantha Rao in Writ Petition No. 10085 of 1999.

The 1st respondent herein, who is the petitioner in the Writ Petition, was employed as a driver with the appellant Corporation. While he was performing duties as a driver, on 03.06.1992, a fatal motor accident took place involving the bus driven by him. Thereafter, based upon the findings contained in the preliminary inquiry report indicating that the accident has been caused due to rash and negligent driving of the bus by the writ petitioner and also due to lack of anticipation on his part which possibly could have prevented the accident from occurring, he was subjected to disciplinary proceedings by drawing a charge sheet against him on 08.08.1992. He participated in the domestic inquiry, whereat he was found guilty of the charge laid against him. After following the due procedure that is prescribed under the APSRTC Employees' (Discipline, Control and Appeal) Regulations, the Depot Manager has imposed on the writ petitioner the punishment of removal from service, by his proceedings, dated 21.12.1992. The writ petitioner has preferred an Appeal against the said order before the Appellate Authority who is the Deputy Chief Traffic Manager, Warangal. In the meantime, he was also prosecuted for causing death by negligence in C.C.No. 61 of 1992 for the offence punishable under Section 304-A of the Indian Penal Code. The

criminal Court, by its judgment dated 24.03.1994, acquitted him of the charge laid against him. Consequently, the writ petitioner has produced a copy of the said judgment and pressed for consideration of his case for reinstatement. We are avoiding to make further references to the order passed by this Court in the Writ Petition instituted by the very same writ petitioner by which the Corporation has been directed to consider the request of the writ petitioner based upon the judgment rendered by the criminal Court. However, the fact remains that the Deputy Chief Traffic Manager, Warangal, by his order dated 08.12.1998, has taken a lenient view of the matter and ordered for reinstatement of the writ petitioner back to duty. That is how, the Corporation has reinstated him and started entertaining him to duty. The conditions subject to which this reinstatement order was issued clearly spelt out that the period from the date of removal to the date of reporting on reinstatement into service be treated as *"NOT ON DUTY FOR ALL PURPOSES"*. It was also further made clear that the writ petitioner is not entitled for any back wages for the past service. This apart, the earlier order of punishment has been substituted by way of reduction by one incremental stage of his pay for a period of one year which shall have the effect of postponing his future increments.

It is appropriate to notice, at this stage, the prayer contained in Writ Petition No. 10085 of 1999, wherein a writ of mandamus is sought for 1) declaring the action of the respondents in not granting petitioner's back wages and not considering petitioner's past service for fixation of pay subsequent to petitioner's reinstatement as illegal and arbitrary; and 2) directing the respondents to pay all the back wages and also treat the petitioner's service as continuous with effect from 1989 and fix the petitioner's pay and all other benefits also.

From the above, it is clear that the writ petitioner has never

challenged the order passed by the Deputy Chief Traffic Manager, Warangal on 08.12.1998, wherein subject to the conditions and terms contained therein, the said Deputy Chief Traffic Manager ordered for reinstatement of the writ petitioner. Instead of noticing this fact that the writ petitioner has not challenged the terms and conditions subject to which his Appeal has been entertained by the Deputy Chief Traffic Manager, the learned Single Judge proceeded to consider the request of the writ petitioner for payment of back wages only from the stand point of view of a Circular, which is stated to have been issued by the Corporation on 21.07.1995. Even that Circular would never set out that the reinstatement should automatically fetch back wages.

The writ petitioner has been found guilty by the Domestic Inquiry Tribunal. Accepting the findings of the Domestic Tribunal, punishment of removal from service was imposed on him by the competent authority, namely the Depot Manager against which order of punishment, the writ petitioner preferred an Appeal and during the course of that Appeal, the writ petitioner relied upon the judgment rendered by the criminal Court acquitting him of the charge laid against him in C.C.No. 61 of 1992. The criminal Court has acquitted him of the charge on the ground that sufficient evidence has not been marshalled by the prosecution to demonstrate that the writ petitioner is the one, who drove the bus and that he caused the accident due to rash and negligent driving. Therefore, we are clearly of the opinion that for a technical reason, the criminal Court has acquitted the writ petitioner. Normally, the standard of proof employed by a criminal Court before handing down conviction to an accused person is that of "proof beyond reasonable doubt", whereas in a disciplinary inquiry, the standard to be employed is one of "preponderance of probability". The Domestic Tribunal had the advantage of looking into the contents of the

preliminary fact-finding inquiry conducted by the Depot Manager, Parkal as soon as the fatal accident has been reported to him and also a joint accident inquiry committee's finding holding the writ petitioner responsible for causing the fatal accident by driving the bus rashly and negligently and also for lacking anticipation which could have possibly avoided the accident occurring at all. The criminal Court obviously did not have the benefit of such material evidence before it. Consequently, it entertained a doubt as to whether it is the writ petitioner, who was driving the bus in question at the time the accident occurred. We are therefore, of the opinion that exercise of discretion vested in the Appellate Authority, namely the Deputy Chief Traffic Manager has been carried out carefully and on proper lines. Without challenging the conditions imposed by the said Appellate Authority for ordering his reinstatement, the writ petitioner could not have sought for an independent declaration for payment of back wages. For this reason alone, the Appeal deserves to be allowed.

However, it has been consistently held, as a matter of settled principle of law, that payment of back wages is not an automatic affair. Several factors have got to be taken into account and consideration and only upon being satisfied that the employee concerned is not at fault at all and he has been unjustly prevented from rendering services to the employer, perhaps, offers justification for payment of 100% back wages. In the instant case, facts have clearly revealed the finding by the Domestic Tribunal that the petitioner is the one, who is responsible for causing the fatal accident resulting in the death of a young person on road. However, the Appellate Authority has exercised discretion and taken a lenient view in view of the acquittal handed down to the writ petitioner in the criminal case. Therefore, exercise of discretion by the Appellate Authority has been carried out on proper lines and he

has also tempered his discretion by imposing appropriate conditions and those conditions have never been called in question by the writ petitioner, lest the very exercise of discretion could have been faulted by this Court.

For the aforementioned reasons, we find that the order passed by the learned Single Judge allowing the Writ Petition is not sustainable and accordingly, we set aside the same. We dismiss the Writ Petition holding that there is no merit in it.

The Writ Appeal stands allowed with this order, but however, without costs.

Consequently, the miscellaneous applications, if any shall stand disposed of.

NOOTY RAMAMOHANA RAO, J

DR. B. SIVA SANKARA RAO, J

11th March 2016

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