

***THE HONOURABLE SRI JUSTICE P. NAVEEN RAO**

+WRIT PETITION No.14739 of 2011

% 14.10.2016

Sri B. Neelakantam, Staff No.465092, Driver, s/o. Dharma Raju, Aged 51 years, R/o.Ambedkar Street, Gokavaram, East Godavari District.

.. Petitioner

AND

The Chairman-cum-Presiding Officer, Industrial Tribunal-cum-Labour Court, Visakhapatnam and another.

.. Respondents

!Counsel for the Petitioner : Sri D.Sunil Kumar for
Sri G. Vidya Sagar.

Counsel for Respondent No.1: GP for Labour (AP)

Counsel for Respondent No.2: SC for APSRTC.

<Gist :

>Head Note:

? Cases referred:

¹ (2006) 5 SCC 446

² (2015) 2 SCC 365



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

**FRIDAY, THE FOURTEENTH DAY OF OCTOBER,
TWO THOUSAND AND SIXTEEN**

**Present
HON'BLE SRI JUSTICE P.NAVEEN RAO**

WRIT PETITION No.14739 of 2011

Between:

Sri B. Neelakantam, Staff No.465092, Driver, s/o. Dharma Raju,
Aged 51 years, R/o.Ambedkar Street, Gokavaram, East Godavari
District.

.. Petitioner

AND

The Chairman-cum-Presiding Officer, Industrial Tribunal-cum-Labour
Court, Visakhapatnam and another.

.. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P.NAVEEN RAO**WRIT PETITION No.14739 of 2011****ORDER**

Petitioner was working as Driver. Disciplinary proceedings were initiated against him and charge memo was issued containing two allegations. In the first charge, it was alleged that the petitioner drove the vehicle bearing No.AP 10 Z 2844 between Gokavaram-Mandapet service on 16.07.2005 in a rash and negligent manner with lack of anticipation at high-way turning and hit an auto, which was coming in opposite direction resulting in the death of a passenger in the auto and two persons in the auto sustained major injuries and four persons sustained minor injuries. In the second charge, it was alleged that the petitioner drove the vehicle on the right side of road instead of left side and has not given space to the auto, which was coming in opposite direction and thus, he failed to take proper precautionary measures to avert the accident resulting in the death of a person in the auto. It was also alleged that damage was caused to the extent of Rs.300/- to the vehicle. Domestic enquiry was conducted on the said charges. The enquiry officer recorded finding that petitioner was guilty of the charges levelled against him. Based on the findings in the domestic enquiry, disciplinary authority passed orders on 11.11.2005 removing the petitioner from service. Appeal and revision filed by petitioner were rejected. Aggrieved thereby, petitioner raised Industrial Dispute

before the Industrial Tribunal-cum-Labour Court, Visakhapatnam. The Labour Court registered the dispute as I.D.No.9 of 2007. The Labour Court passed a -Nil- award on 04.11.2009. Aggrieved thereby, this writ petition is filed.

2. To complete the narration of facts, on the very same incident, criminal prosecution was launched against petitioner. Petitioner was accused in C.C.No.1680 of 2006 on the file of V Additional Judicial First Class Magistrate, Rajahmundry. Vide judgment dated 18.01.2010, petitioner was acquitted.

3. Heard learned counsel for petitioner, learned Government Pleader for Labour for respondent No.1 and Sri S.V.Ramana, learned Standing Counsel for APSRTC for respondent No.2.

4. Learned counsel for petitioner would submit that the petitioner was not driving the vehicle in a rash and negligent manner and at the time of incident, there was a steep road and when the petitioner was driving the vehicle with low speed to climb the road, the auto driver, who came from opposite direction, was driving the auto in a rash and negligent manner and hit the vehicle which resulted in accident. According to learned counsel, petitioner was not negligent in driving the vehicle and therefore, disciplinary action was erroneously initiated against him and that the stand of petitioner was not appreciated and in predetermined manner, punishment of removal from service was imposed.

4.1. Learned counsel for petitioner further submits that the accident occurred since the driver of auto lost balance and failed to apply the brakes. If only the driver of auto was careful in driving, the accident could not have occurred. Learned counsel further submits that on the very same allegations, the criminal prosecution was launched against petitioner and on conducting of full-fledged trial and on analyzing the evidence on record, the trial Court held that the petitioner was not guilty of the charges levelled against him, but the accident occurred due to negligent driving of the driver of auto and acquitted the petitioner. He would therefore submit that as the charges levelled against the petitioner in the domestic enquiry and the allegations made in the criminal case being the same and as a consequence of acquittal in the criminal case, petitioner is entitled to be reinstated into service. He would submit that in view of the findings recorded by the trial Court, the findings recorded in the departmental proceedings are liable to be nullified by granting all consequential benefits to the petitioner. In support of his contentions, learned counsel placed reliance on the decisions of the Supreme Court in **G.M.TANK v. STATE OF GUJARAT**¹ and **S. BHASKAR REDDY v. SUPERINTENDENT OF POLICE**².

5. Learned Standing Counsel for respondent No.2 would submit that a detailed enquiry was conducted on the allegations levelled

¹ (2006) 5 SCC 446

² (2015) 2 SCC 365

against petitioner and the charge of negligence in driving the vehicle was proved with cogent evidence brought on record and that the very issue was again contested before Labour Court and the Labour Court on thorough analysis of evidence on record held petitioner as guilty and affirmed the disciplinary action taken against him. He would therefore submit that there was no illegality in the disciplinary action taken against petitioner and merely because petitioner was subsequently acquitted by the criminal Court is no ground to nullify the disciplinary action validly taken. He would submit that the nature of evidence required in domestic enquiry is not of the same standard as required in criminal proceedings and domestic enquiry is based on 'preponderance of probabilities' and an employee can be found guilty and penalized. In the instant case, in the domestic enquiry, charges were proved, but, subsequent acquittal of the petitioner in the criminal case is no ground to nullify the findings in the domestic enquiry. He would therefore submit that the petitioner is not entitled to be reinstated into service for grant of consequential benefits. He would further submit that according to the instructions on the subject, whenever an employee is involved in criminal case, on acquittal, the employee is required to submit a representation to the respondent Corporation within 60 days from the date of acquittal, whereas in the case on hand, petitioner has not made any such representation and straightaway invoked the jurisdiction of this Court. Based on the ground of laches on the part of petitioner, he is not entitled to any

relief. He would further submit that petitioner was removed from service on 11.11.2005 and if order of removal is set aside after 11 years, grave prejudice would be caused to the respondent Corporation and huge benefits are required to be paid to the petitioner though he has not rendered any service to the employer and employer was not responsible for the lapses committed by the petitioner.

6. Shorn of details, the issue in this writ petition is that the bus driven by the petitioner met with accident involving an auto coming from opposite direction, which resulted in death of a passenger of auto. In the domestic enquiry, the primary allegation against petitioner was, driving the vehicle in rash and negligent manner and with lack of anticipation. The other two charges are incidental to this allegation. On the very same incident, criminal prosecution was launched against petitioner. The charge in criminal case is that the petitioner was responsible for causing the accident by driving the vehicle in rash and negligent manner. On conduct of full-fledged trial, the trial Court found that the petitioner was not responsible for causing the accident and a categorical finding was recorded that the accident occurred due to negligent driving of driver of auto. It is useful to extract the relevant portion of the finding recorded by the trial Court, which reads as under:

“P.Ws 1 to 3 denied that the auto is proceeding on the slope road and the bus is proceeding on up road. But P.W.9 deposed contrary

to P.Ws 1 and 3. On careful scrutiny of the Exs.P2 and P3 photographs, it clearly evident that the accident took place in the deep road curve and when the RTC bus was just crossing the road curve, the accident took place. If it is so, there is no possibility for the RTC driver to drive the bus at high speed, but whereas when the auto is just entered into the curve the accident took place, as such, there is a possibility for the driver of the auto to drive the auto at High Speed. Exs.P2 and P3 photographs clearly go to show that the road towards Rajanagaram is a slope road. If it is so, the RTC bus is proceeding to the up road, so there is no possibility to drive the RTC bus at high speed.

xxxxx

The evidence of P.W.4 coupled with Ex.P1 M.V.I. report clinchingly proved that there is no mechanical defect in the bus as well as in the auto, as such it can be safely held that the accident was occurred due to rash and negligent driving of the drivers of vehicle. Now the point for determination is, whether the accident was occurred due to the negligent driving of the auto by P.W.3 or by the accused. In the above para, I already held that Exs.P2 and P3 photographs clearly goes to show that the negligence is on the part of P.W.3, but not by the driver of bus and the said fact is also corroborated with the evidence of P.W.9".

7. The trial Court therefore held that "without hesitation I hold that the prosecution miserably failed to prove that the accused driven the RTC bus in a rash and negligent manner and dashed against the auto and caused the death of A. Satyanarayana and also caused grievous injuries to P.W.1, thereby the accused is entitled for acquittal for the charges leveled against him for the offence u/s.304-A, 338 IPC".

8. As compared to these findings, the Industrial Tribunal by vaguely recording the statement of the Conductor held as under:

"That means, the driver applied brakes only after the collision.
 This evidence of the conductor would falsify the statement of the driver

that having seen the auto from certain distance he had already applied brakes but the driver of the auto without applying brakes proceeded further, could not control balance of the auto and hit against the bus. Basing on these circumstances, a reference to the findings of the enquiry officer is desirable. It is found that the drive drove the vehicle on the right side of the road leaving a gap of only 4' to the opposite coming auto. There is no evidence of his overtaking a tractor because there is no evidence about the presence of a stationed tractor on the road during course of the preliminary enquiry. Even otherwise, according to the opinion of the joint committee of accident, and also as opined by the enquiry officer, the driver of the bus is not supposed to go on the way earmarked for his opposite coming vehicle. So, there is a lapse on the part of the charged employee. For this conclusions arrived at by the enquiry officer, there is evidence on record, besides application of principle of *res ipsa loquitur*. Therefore, I find that the findings recorded by the enquiry officer are not perverse, therefore, it is not fit case for this Court to interfere with that finding of fact. The point is answered against the petitioner and in favour of the respondent".

9. As noticed above, the statement of the conductor was that while bus was turning, he heard a loud sound and then, the bus was stopped, himself and the driver got down from the bus and they have noticed an auto in front of the bus and three passengers have sustained injuries. Conductor never said that petitioner was driving the vehicle in rash and negligent manner. The statement of the conductor was treated as if driver was responsible for the accident and applied brakes only after the collision. In the criminal case, the statement of conductor was evaluated and the statement of other witness was discarded and the trial Court by duly noting the statement given by the conductor, held in favour of the petitioner.

10. It is thus clear that the Labour Court erred in analyzing the evidence available on record and the finding arrived at by the Labour

Court that the petitioner drove the vehicle in rash and negligent manner is not supported by material on record. On the contrary, as analyzed by the trial Court, the accident occurred due to negligent driving of auto by its driver and the trial Court granted acquittal. This finding arrived at by the Labour Court cannot be sustained.

11. It is settled principle of law, the departmental proceedings and criminal proceedings are two different and distinct. In departmental enquiry, what is required is, whether by the conduct of the employee, the employee lost confidence of the employer and therefore, employee is liable to be penalized. Such conduct of the employee can also be in violation of penal provisions and can result in criminal prosecution. In case the employee is proceeded with as per criminal law and is acquitted for various reasons including lack of evidence, the same need not be the factor for the employer to withdraw the disciplinary action already initiated or to exonerate as a matter of course. Further more, it is also settled principle of law that in criminal cases, 'prosecution has to establish the charge against the accused beyond reasonable doubt', whereas in departmental enquiry, based on 'preponderance of probabilities', the employer can hold the employee guilty and punish him. Thus, mere acquittal in criminal case ordinarily cannot result in granting service benefits to an employee, who was also proceeded in domestic enquiry and was visited with some penalty. However, in the case on hand, the substance of the charge against petitioner in domestic enquiry as

well as in criminal proceedings is one and the same i.e., causing accident due to rash and negligent driving. Thus, the finding recorded by the competent criminal Court shall have a bearing on the claim of petitioner.

12. The scope and effect of the judgment by the criminal Court granting acquittal on the disciplinary action against the employee was considered by the Supreme Court in **G.M. TANK**. In the said case, the facts are similar to the facts in this case. The allegation against the employee was that he was having income disproportionate to known sources of income. On the said allegation, disciplinary proceedings as well as criminal prosecution was initiated against him. In the departmental enquiry, charges were held proved and he was penalized. Almost 20 years later, in the criminal proceedings he was acquitted. The employee claimed all service benefits as a consequence to the acquittal granted by the criminal Court. On considering the findings in disciplinary proceedings and in the criminal case, the Supreme Court held as under:

"It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand".
(emphasis applied)

13. This issue was also considered by the Supreme Court in **S. BHASKAR REDDY**. In the said case, while employees were

working in Railway Police, they were implicated in a murder case. Based on the same, disciplinary action was initiated resulting in dismissal from service on the allegation of committing murder. In the criminal prosecution launched against them, they were acquitted.

14. One of the contentions urged was that the High Court had not considered the impact of honourable acquittal granted by the competent criminal Court. On review of precedent decisions and on assessing the acquittal granted by criminal Court, the Supreme Court held as under:

“We have answered the alternative legal contention urged on behalf of the appellants by accepting the judgment and order of the Sessions Judge, in which case they have been acquitted honourably from the charges which are more or less similar to the charges levelled against the appellants in the disciplinary proceedings by applying the decisions of this Court referred to supra. Therefore, we have to set aside the orders of dismissal passed against the appellants by accepting the alternative legal plea as urged above having regard to the facts and circumstances of the case”.

15. Guided by the above principle of law laid down by the Supreme Court, as analyzed above, the finding of the Labour Court is not sustainable and is liable to be set aside and as a consequence, the punishment of removal imposed on the petitioner is also liable to be set aside and is accordingly set aside.

16 What is required to be considered further is what relief can be granted to the petitioner. After conducting departmental proceedings and after observing due process, the punishment of removal was

imposed on 11.11.2005, which was affirmed by the appellate and the reviewing authorities as well as by the Labour Court. The acquittal was granted to the petitioner on 18.01.2010. The writ petition was instituted in the year 2011. Thus, except for acquittal granted to the petitioner by criminal Court, it cannot be said that the order of removal from service is erroneous. Therefore, having regard to these facts, the monetary relief payable to the petitioner is required to be properly modulated.

17. At this stage, learned Standing Counsel for respondent No.2 would submit that the petitioner was not diligent in prosecuting the legal remedies. The Labour Court dismissed the dispute on 04.11.2009. The acquittal was granted to the petitioner on 18.01.2010. He kept quiet for more than one year. Even though the circular instructions mandate making a representation within 60 days of acquittal, no such representation was made and straightaway this writ petition is filed. Thus, petitioner is guilty of laches and therefore, he is not entitled to any monetary benefit.

18. Though a vague averment is made that the petitioner has submitted oral representation after acquittal, no material is brought on record to show that the representation was made to the employer after acquittal informing about acquittal. Employer cannot be expected to note the acquittal granted to the petitioner, more so, when such acquittal was after the removal from service and

therefore, the burden lies on the petitioner to inform the employer about the acquittal granted to him. Further more, as rightly pointed out by the learned standing counsel for respondent No.2, petitioner did not invoke the jurisdiction of this Court soon after acquittal was granted, but filed this writ petition after more than one year. In view of these facts, I deem it appropriate to restrict the payment of monetary benefits to the petitioner from the date of institution of this writ petition i.e. 26.03.2011.

19. Thus, the Writ Petition is allowed and the order of removal from service is set aside. Petitioner is entitled to all consequential benefits including continuity of service and all other benefits flowing there from. However, petitioner is entitled to claim back wages only from the date of institution of this writ petition i.e. 26.03.2011.

There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

14th October, 2016
sj

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P.NAVEEN RAO, J