

**THE HONOURABLE SRI JUSTICE A.V.SESHA SAI**

W.P.No.1597 of 2012

Oral Order :

Challenge in the present writ petition is to the Award dated 14-7-2011 in I.D.No.63 of 2009 passed by the 1<sup>st</sup> respondent-Industrial Tribunal-cum-Labour Court, Visakhapatnam ( for short “the Tribunal”).

Brief facts, leading to filing of the present writ petition are as under :

The petitioner was a driver in the respondent-Corporation. The 2<sup>nd</sup> respondent-Depot Manager, Gokavaram Depot, East Godavari District issued charge sheet on 5.11.2007, and in response to the same, the petitioner herein submitted his explanation. Thereafter, an Enquiry Officer was appointed, who submitted his report on 28.6.2008. After giving show cause notice of removal dated 12.7.2008 and after receipt of reply dated 19.7.2008, an order of removal dated 24.7.2008 was passed by the Depot Manager, Gokavaram Depot, East Godavari District and the same was challenged in appeal, which ended in dismissal. Thereafter, the petitioner filed a review before the Regional Manager of the respondent-Corporation and the said review was also dismissed by the authority by way of order dated 25.2.2009. Subsequently, the petitioner herein raised I.D.No.63 of

2009 under Section 2A(2) of the Industrial Disputes Act, 1947, seeking to set aside the order of removal before the Tribunal. The Tribunal by virtue of Award dated 14.7.2011 dismissed the said Industrial Dispute No.63 of 2009.

Calling in question, the validity and the legal sustainability of the said order passed by the Tribunal, confirming the order of removal passed by the Depot Manager, as confirmed by the appellate and reviewing authorities, the present writ petition has been filed.

A counter affidavit has been filed by the respondent-Corporation, denying the allegations and the averments made in the affidavit filed in support of the writ petition and justifying the impugned action.

Heard Smt. S. Nanda, learned counsel for the petitioner and Sri S.V.Ramana learned Standing Counsel for the respondents.

It is contended by the learned counsel for the petitioner that the Award passed by the Tribunal, confirming the order of removal is erroneous, contrary to law and opposed to the very spirit and object of the provisions of the Industrial Disputes Act, 1947. It is further submitted that the impugned action of removal is in total violation of principles of natural justice as the respondent conducted the enquiry ex-parte and inflicted punishment of removal basing on the said ex-parte enquiry. It is further submitted by the learned counsel for the petitioner that the respondent-authorities ought to have taken into

consideration of long service rendered by the petitioner herein and ought not to have inflicted the impugned punishment of removal from service. It is further submitted that in the absence of any evidence to show that the petitioner drove the vehicle in rash and negligent manner, the respondent-authorities are not justified in inflicting the major punishment of removal from service. In support of her submissions and contentions, learned counsel for the petitioner has placed reliance on the judgment of the Honourable Madras High Court in Writ Petition (MD) No.7059 of 2007 dated 8.10.2010.

On the contrary, it is vehemently contended by the learned Standing Counsel for the respondent-Corporation that there is no illegality nor there exists any procedural infirmity in the impugned action, as such, the impugned Award confirming the order of removal as confirmed by the appellate and review authorities is not amenable for judicial review under Article 226 of the Constitution of India. It is further submitted by the learned Standing Counsel that in the absence of any perversity or element of lack of jurisdiction, interference of this Court is not warranted in the present writ petition.

In the above background, now the issue that emerges for consideration of this Court is -

“ Whether the impugned Award passed by the Labour Court is sustainable in the eye of law or whether the same requires any interference of this

Court under Article 226 of the Constitution of India ?”

.

The information available before this Court manifestly discloses that the disciplinary authority-Depot Manager issued the charge sheet to the petitioner framing the following charges :

“ 1. For having driven the vehicle NO.AP 11Z 5084 in a rash and negligent manner and with lack of anticipation and without taking proper precautionary measures on 19.10.2007 on the route 08.10 hrs VSP-RJY-GKRM which resulted at Rajula Kothuru, 8 KMs away from Tuni, the bus tilted and capsized into road side ditch of 19.9 depth, resulting one ADC of Tuni Depot and three passengers inside the bus died and 30 passengers sustained injuries, which constitutes serious misconduct under Reg.28(ix) (a) & (b) & (xxxi) of APSRTC Employees' (conduct) Regulations, 1963.

2. For having caused extensive damages to the vehicle No.AP 11Z 5084 in such a way that the pillars and roof sticks of the bus were completely damaged and the bus body is not useful for CU and new bus body is to be fabricated having the accident caused to the vehicle while you were driving the vehicle on 19.10.2007 on the route 8.10 hrs. VSP-RJY-GKRM, which constitutes misconduct under Reg.28(ix)(a) & (b) & (xxxi) of APSRTC Employees' (conduct) Regulations, 1963.”

In response to the said charges, the petitioner herein submitted his explanation. Thereafter, the respondent-authorities appointed the enquiry officer, who submitted a report on 28.6.2008 and after inviting comments on the

enquiry report, a show cause notice of removal was issued by the disciplinary authority and after receipt of the same the petitioner herein submitted his reply also. Thereafter, the disciplinary authority passed an order of removal on 24.7.2008, and challenging the same the petitioner preferred appeal and the same ended in dismissal and the review petition filed by the petitioner was also dismissed. The petitioner raised industrial dispute before the Tribunal and the Tribunal vide impugned award dismissed the I.D.

In the present writ petition the principal grievance of the petitioner is that without giving any opportunity to him, the respondent-Corporation terminated him from service. According to the petitioner, he attended before the enquiry officer on 13.2.2008 on which date statements of certain employees were recorded and the petitioner was asked to attend the enquiry on 23.6.2008, but due to sudden demise of his mother-in-law, he could not attend the enquiry on 23.6.2008. According to the learned counsel for the petitioner instead of closing the enquiry, the enquiry officer ought to have given one more opportunity to the petitioner to attend the enquiry on any subsequent date. But the fact remains that the petitioner herein did not even choose to send any intimation on the said date i.e. 23.6.2008 as to the alleged incident due to which he could not attend the enquiry, nor the petitioner herein made any endeavour to place on record the death

certificate if any to substantiate the said contention. The judgment of the Madras High Court in Writ Petition (MD) No.7059 of 2007 dated 8.10.2010, on which the petitioner herein has placed reliance, in the facts and circumstances of the case, would not render any assistance to the petitioner. In the said case employee therein passed on information and made a request also to the concerned authorities, but in the present case, the said contingencies are conspicuously absent. According to the material available on record, and the counter filed on behalf of the respondents, it is evident that in the accident which led to the impugned action, three persons lost their valuable lives and 30 individuals sustained injuries also. It is categorically stated in the counter that due to the accident, the respondent-Corporation had to shell down approximately Rupees Fifty lakhs towards compensation.

A perusal of the impugned Award clearly shows that the learned Presiding Officer categorically recorded a finding with regard to various aspects, touching rash and negligent driving and the absence of any skid marks on the spot and loss of valuable lives and ultimately came to a conclusion against the petitioner herein. In this context it may be appropriate to refer to the judgment of the Hon'ble Supreme Court in UNION OF INDIA v. P.GUNASEKARAN

[\[1\]](#), relevant portion of the same reads as under :

“Despite the well-settled position, it is painfully disturbing to

note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re- appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;
- b. the enquiry is held according to the procedure prescribed in that behalf;
- c. there is violation of the principles of natural justice in conducting the proceedings;
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- i. the finding of fact is based on no evidence.

Under Article 226/227 of the Constitution of India, the High

Court shall not:

- (i). re-appreciate the evidence;
- (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii). go into the adequacy of the evidence;
- (iv). go into the reliability of the evidence;
- (v). interfere, if there be some legal evidence on which findings can be based.
- (vi). correct the error of fact however grave it may appear to be;
- (vii). go into the proportionality of punishment unless it shocks its conscience.”

In the instant case the petitioner herein has not made out a case, warranting any interference of this Court under Article 226 of the Constitution of India as per the principles and parameters laid down in the P.GUNASEKARAN's case ( 1 supra). In the absence of any perversity and in the absence of failure on the part of the respondent-authorities and the Tribunal in appreciating the evidence properly, this Court is not inclined to meddle with the well reasoned and well crafted Award passed by the Tribunal.

For the afore said reasons, the writ petition is dismissed. No costs. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE A.V.SESHA

SAI

Dt:12.4.2016

KK

**THE HONOURABLE SRI JUSTICE A.V.SESHA SAI**

WP No.1597 of 2012

12.4.2016

---

[\[1\]](#) (2015) 2 Supreme Court Cases 610