

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

W.P.No. 25426 OF 2014

ORDER:

The petitioners filed this Writ Petition challenging the award dated 18-06-2013 in I.D.No. 5 of 2008 passed by the 2nd respondent.

The 1st respondent worked as a driver in the 1st respondent's depot. While the 1st respondent was serving as driver on 08-02-2007 with vehicle No. AP 10 Z 4179 plying from Nellore to Pamur, he drove the same in rash and negligent manner at high speed totally disregarding of traffic rules, without taking any precautions, hit against an auto bearing No. AP 2741 and, therefore, caused an accident which resulted in death of two passengers on the spot and several others sustained injuries in the said accident. Thus, the 1st respondent caused damage to the vehicle also besides causing death of two persons and injuries to several. Thereby, the petitioners sustained huge loss on account of rash and negligent act of the 1st respondent.

Basing on the report of accident, an enquiry was ordered against the 1st respondent; he was found guilty, for the charge having driven the bus bearing No. AP 10 Z 4179 in rash and negligent manner at high speed towards right side of the road without following traffic rules and without taking precautionary steps to avert the accident and for causing loss to the lives of two passengers and injuries to other passengers traveling in the auto, under Regulation 28 (ix) of the Andhra Pradesh State Road Transport Corporation Employees (Conduct) Regulations, 1963 (for short, '1963 Regulations'); and imposed punishment of removal from service.

Aggrieved by the order of the 1st petitioner and confirmed by the 2nd petitioner in appeal, the 1st respondent filed I.D.No. 5 of 2008 before the 2nd respondent but the 2nd respondent, on technicalities, just to excuse the workman, set aside the penalty of removal from service while allowing the

industrial dispute. The findings of the 2nd respondent are not based on any material and the powers of the 2nd respondent are limited but the 2nd respondent, transgressing its powers, passed the award setting aside the penalty of removal imposed by the petitioners. Thus, the 2nd respondent committed a grave error in passing the award and prayed to set aside the same on various grounds.

The 1st respondent did not file any counter.

Learned counsel for the petitioners during hearing would contend that the powers of the 2nd respondent are limited and the 2nd respondent is not supposed to interfere with fact findings recorded by departmental authorities and interfere with the penalty imposed against the 1st respondent but the 2nd respondent, after re-appreciating entire oral and documentary evidence, passed the award erroneously and, therefore, prayed to restore the penalty of removal imposed against the 1st respondent setting aside the award passed by the 2nd respondent in favour of the 1st respondent.

Per contra, learned counsel for the 1st respondent argued totally in support of the findings recorded by the 2nd respondent since the 1st respondent was acquitted by criminal Court for the offence punishable under Sections 304-A and 338 of the Indian Penal Code (for short, 'I.P.C.'). When the 1st respondent was acquitted for the grave charge, the findings of the 2nd respondent cannot be interfered and prayed to confirm the award passed by the 2nd respondent in view of the limited powers of this Court under Article 226 of the Constitution of India.

Considering rival contentions and perusing material on record, the sole point that arises for consideration is as follows:

"Whether the 1st respondent drove the vehicle in rash and negligent manner causing death of two passengers besides causing injuries to several others traveling in an auto and damage to the vehicle, if so,

whether the award passed by the 2nd respondent in I.D.No. 5 of 2008 is liable to be set aside?"

The 1st respondent was found guilty for the gross misconduct as defined under Regulation 28 (ix) of 1963 Regulations and removed from service. When the petitioners contended that the cause of accident was due to rash and negligent driving of the 1st respondent, it is for the petitioners to prove such misconduct producing satisfactory evidence. The standard of proof in departmental enquiries depends upon probabilities of the case but not upon the principle of beyond reasonable doubt. Therefore, burden of proof in departmental proceedings is slightly different from strict proof as required under criminal law.

The grievance of the petitioners is that the 1st respondent, while driving bus bearing No. AP 10 Z 4179 from Nellore to Pamuru and when reached the place of accident, hit an auto bearing No. AP 27 V 2741 which resulted in death of two passengers at the spot and caused injuries to others besides damage to the vehicle. Thus, the 1st respondent drove the vehicle in rash and negligent manner. The explanation submitted by the 1st respondent is total denial while contending that he took necessary care and caution while driving the bus. The enquiry officer, considering the material, concluded that the accident occurred only due to rash and negligent act of the 1st respondent. The appellate authority also confirmed the said finding but the 2nd respondent, re-appreciating entire evidence on record, set aside the penalty of removal from service.

The word negligence is not defined anywhere but it means failure to take required care and caution, while discharging duties as an ordinary prudent driver, in case of accident. The Apex Court, in ***Ravi Kapoor Vs. State of Rajasthan***^[1], analyzed the concept of negligence, following the definition of 'negligence' in Halsbury's Laws and dictionary meaning, as follows:

"General principles of law of negligence:- Negligence is a specific tort and in any given circumstances is the failure to exercise that care which the circumstances demand. What amounts to negligence depends on the facts of each particular case. It may consist in omitting to do something which ought to be done or in doing something which ought to be done either in a different manner or not at all. Where there is no duty to exercise care, negligence in the popular sense has no legal consequence. Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which can be reasonably foreseen to be likely to cause physical injury to persons or property. The degree of care required in the particular case depends on the surrounding circumstances, and may vary according to the amount of the risk to be encountered and to the magnitude of the prospective injury. The duty of care is owed only to those persons who are in the area of foreseeable danger, the fact that the act of the Defendant violated his duty of care to a third person does not enable the Plaintiff who is also injured by the same act to claim unless he is also within the area of foreseeable danger. The same act or omission may accordingly in some circumstances involve liability as being negligent, although in other circumstances it will not do so. The material considerations are the absence of care which is on the part of the Defendant owed to the Plaintiff in the circumstances of the case and damage suffered by the Plaintiff, together with a demonstrable relation of cause and effect between the two.

According to the dictionary meaning "reckless" means "careless", regardless or heedless of the possible harmful consequences of one's acts. It presupposes that if thought was given to the matter by the doer before the act was done, it would have been apparent to him that there was a real risk of its having the relevant harmful consequences; but, granted this, recklessness covers a whole range of states of mind from failing to give any thought at all to whether or not there is any risk of those harmful consequences, to recognizing the existence of the risk and nevertheless deciding to ignore it.

'Negligence' means omission to do something which a reasonable and prudent person guided by the considerations which ordinarily regulate human affairs would do or doing something which a prudent and reasonable person guided by similar considerations would not do. Negligence is not an absolute term but is a relative one; it is rather a comparative term. It is difficult to state with precision any mathematically exact formula by which negligence or lack of it can be infallibly measured in a given case. Whether there exists negligence will normally depend upon the attending and surrounding

facts and circumstances which have to be taken into consideration by the Court. In a given case, even not doing what one was ought to do can constitute negligence.

The other principle that is pressed in aid by the courts in such cases is the doctrine of res ipsa loquitur. This doctrine serves two purposes – one that an accident may by its nature be more consistent with its being caused by negligence for which the opposite party is responsible than."

In view of the principle laid down in the above judgment, if a driver establishes that he had taken reasonable care while driving vehicle as an ordinary prudent driver, he would not be found guilty for negligence based on the doctrine of reasonable care. Here, the contention of the 1st respondent is that he took every care and caution while driving the vehicle but the enquiry officer and the petitioners did not accept the contention of the 1st respondent and imposed penalty of removal. However, the 2nd respondent overturned the finding of the petitioners after thorough re-appreciation of evidence on record. The reasonable care taken by the 1st respondent has to be established by examining any of the witnesses *i.e.* any of the passengers traveling in the bus or examining any persons who directly witnessed the accident. Here, the 1st respondent examined no witnesses but relied on Photostat copy of calendar and judgment in C.C.No. 137 of 2007 and Photostat copy of rough sketch of the scene of offence prepared by Sub Inspector of Police, Pamuru, whereas the petitioners relied on Exs.M1 to M21 but here Exs.W1 and W2 are relevant for the reason that Ex.W2 was prepared by Sub Inspector of Police who is an independent investigating authority. Ex.W1 is calendar and judgment passed by Judicial I Class Magistrate. As per Ex.W1, the 1st respondent was found not guilty for the offence charged against him and acquitted by the trial Court. No appeal was preferred aggrieved by calendar and judgment passed in C.C.No. 137 of 2007 either by State or by management *i.e.* the petitioners. Therefore, calendar and judgment in C.C.No. 137 of 2007 attained finality.

The 1st respondent totally relied on calendar and judgment referred *supra* to prove that he was not guilty for the misconduct under Regulation 28 (ix) of 1963 Regulations. In fact, findings of criminal Court are not binding in departmental enquiries since standard of proof in criminal case is a proof beyond reasonable doubt by applying the doctrine of golden thread rule whereas proof beyond reasonable doubt is not applicable in departmental enquiry since it cannot be equated with criminal proceedings. In **Nand Kishore Prasad Vs. State of Bihar and others**^[2], the Apex Court, discussing about binding nature of calendar and judgment in departmental proceedings and standard of proof required in criminal case, held as follows:

"Disciplinary proceedings before a domestic tribunal are of a quasi-judicial character. Therefore, the minimum requirement of the rules of natural justice is that the tribunal should arrive at its conclusion on the basis of some evidence i.e. evidential material which with some degree of definiteness points to the guilt of the delinquent in respect of the charge against him. If the disciplinary inquiry has been conducted fairly without bias or predilection, in accordance with the relevant disciplinary rules and the Constitutional provisions, the order passed by such authority cannot be interfered with in proceedings under Article 226 of the Constitution of India, merely on the ground that it was based on evidence which would be insufficient for conviction of the delinquent on the same charge at a criminal trial."

From the principle laid down by the Apex Court, it is clear that when delinquent was found not guilty by a criminal Court for the charges framed against him, that will have no bearing on disciplinary proceedings since standard of proof varies from criminal proceedings to disciplinary proceedings and at best the duty of this Court under Article 226 of the Constitution of India is narrower than criminal proceedings.

In **Union of India (UOI) Vs. Sardar Bahadur**^[3], the Apex Court held that

"A disciplinary proceeding is not a criminal trial. The standard proof required is that of preponderance of probability and not proof beyond reasonable doubt. Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that

the officer is guilty, it is not the function of the High Court exercising its jurisdiction under Article 226 to review the materials and to arrive at an independent finding on the materials."

In **Zonal Manager, LIC of India Vs. Mohan Lal**^[4], the Apex Court held that

"When the rules are clear that unless the maker of a document is available for cross-examination, the document should not be admitted in has no application to domestic enquiries."

In view of the principle laid down in the above judgment, proof of document as required in civil proceedings cannot be applied to departmental proceedings. Therefore, the 2nd respondent marked Exs.W1 and W2 and Exs.M1 to M21 and considered the material at length after re-appreciation of each and every document and the circumstances. In such case, this Court cannot interfere with by exercising power of judicial review.

Time and again, the Apex Court in number of decisions clearly declared that Courts, while exercising power of judicial review, cannot interfere with fact findings recorded by departmental authorities and tribunals unless they are perverse. In **Syed Yakoob Vs. K.S.Radhakrishnan and others**^[5], a larger bench of the Apex Court held that

"A Writ of Certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals and these are cases where orders are passed by inferior Courts or Tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. Similarly, a Writ can be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice and there is, however, no doubt that the jurisdiction to issue a Writ of Certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court and this limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in Writ proceedings and an error of law which is apparent on the face of the record can be corrected by a Writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a Writ of Certiorari can be issued if it is shown that in recording the said finding, the

Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding, and similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a Writ of Certiorari. In dealing with this category of cases, however, they must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a Writ of Certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding and the adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a Writ Court and it is within these limits that the jurisdiction conferred on High Courts under Article 226 to issue a Writ of Certiorari can be legitimately exercised."

In ***Union of India and others Vs. P.Gunasekaran***^[6], the Apex Court held that

"In exercise of power of judicial review under Articles 226 or 227, the High Court cannot venture into re-appreciation of evidence or interfere with conclusions in enquiry proceedings if the same are conducted in accordance with law, or go into reliability/adequacy of evidence, or interfere if there is some legal evidence on which findings are based, or correct error of fact however grave it may be, or go into proportionality of punishment unless it shocks conscience of Court and it can only consider whether enquiry held by competent authority was in accordance with procedure established by law and principles of natural justice, whether irrelevant or extraneous considerations and/or exclusion of admissible or material evidence or admission of inadmissible evidence have influenced decision rendering it vulnerable. It can interfere where finding is wholly arbitrary and capricious based on no evidence which no reasonable man could ever arrive at."

The principle laid down in the above judgment is almost identical to ***Syed Yakoob*** (5th *supra*). Thus, in view of the law declared by the Apex Court in various judgments, the powers of High Court under Article 226 of the Constitution of India are limited and this Court cannot interfere unless it is established that Tribunal recorded findings totally contrary to the evidence available on record or recorded a perverse finding but here the petitioners are unable to show any such perversity in the findings. On the other hand, the 2nd respondent appreciated each and every fact born out from the record

based on voluminous documentary evidence on record. No doubt calendar and judgment of a criminal court are not binding in departmental proceedings. If there is any amount of evidence available pointing out the guilt of the 1st respondent in this case, the 2nd respondent can record a finding but, having found no evidence on record to establish the guilt of the 1st respondent for the misconduct under Regulation No. 28 (ix) of 19163 Regulations, found him not guilty for the alleged gross misconduct. In view of the limited powers of this Court under Article 226 of the Constitution of India to exercise power of judicial review, I am not inclined to interfere with the findings recorded by the 2nd respondent. The documents produced by the petitioners *i.e.* Ex.M1 Report of Security A.SI., Nellore I Depot, Ex.M2 Report of Medical Foreman, Nellore II Depot, Ex.M4 Rough Sketch of the accident spot drawn by inquiry officer and other documents *i.e.* Exs.M5 and M6 are the only documents prepared by departmental authorities. Ex.M3 is First Information Report which is not a substantive piece of evidence but it sets the criminal law into motion. Ex.M7 is copy of charge sheet and the allegations leveled therein are required to be proved beyond reasonable doubt before a criminal Court. The other documents are only departmental proceedings and they are not of much relevant to decide the real controversy by the 2nd respondent. However, the 2nd respondent recorded its findings based on the evidence on record. Therefore, such findings recorded by the 2nd respondent cannot be interfered with by this Court while exercising power of judicial review under Article 226 of the Constitution of India.

One of the reasons to exonerate the 1st respondent is that he was acquitted in criminal prosecution in C.C.No. 137 of 2007 by Judicial Magistrate of I Class, Kanigiri. On verification of calendar and judgment, it is found that the 1st respondent was acquitted by extending benefit of doubt but not honourable acquittal. It is an elementary principle of law that judgments of criminal Courts are not binding in civil cases. However, departmental

proceedings are on different footing. In ***Capt. M. Paul Anthony Vs. Bharat Gold Mines Limited and another***^[7] and in ***G.M. Tank Vs. State of Gujarat and another***^[8], the Supreme Court consistently held that when the accused was honourably acquitted by criminal Court, he cannot be dismissed in departmental proceedings based on same set of facts, evidence and witness. No doubt that the employee if acquitted honourably by competent criminal Court, he cannot be dismissed on same set of facts, evidence and witness but acquittal of the 1st respondent in the present case is only by extending benefit of doubt but not honourable. The expression honourable acquittal means "acquitted of blame" or "fully exonerated" but the meaning is not exhaustive. Moreover, in ***The Management of Reserve Bank of India Vs. Bhopal Singh Panchal***^[9], the Apex Court held that when the accused was acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges leveled against the accused, it can possibly be said that the accused was honourably acquitted. In the present case, the 1st respondent was acquitted extending benefit of doubt but not honourable acquittal. In ***S.Bhaskar Reddy and another Vs. Superintendent of Police and another***^[10], the Apex Court held that

"If the accused/employee is acquitted honourably by competent Court, dismissal of employee on same set of facts and evidence in departmental proceedings is illegal."

Even to apply the said principle, the acquittal must be honourable but the 1st respondent was acquitted by extending benefit of doubt in the present case but not honourably acquitted. Hence, setting aside the penalty and exonerating the 1st respondent for the gross misconduct on the ground that he was acquitted by competent criminal Court is not justifiable. Therefore, on this ground, the award cannot be sustained but, however, the award can be interfered on other grounds.

In view of my foregoing discussion, I find no illegality or irregularity in

the findings recorded by the 2nd respondent warranting interference of this Court while exercising power of judicial review under Article 226 of the Constitution of India. Consequently, the Writ Petition is liable to be dismissed.

Accordingly, the Writ Petition is dismissed. Pending miscellaneous petitions, if any, in this Writ Petition shall stand dismissed in consequence. No order as to costs.

M.SATYANARAYANA

MURTHY, J.

Date: 03rd June, 2016.

JSK

[\[1\]](#) AIR 2012 SC 2986

[\[2\]](#) AIR 1978 SC 1277

[\[3\]](#) (1972) 4 SCC 618

[\[4\]](#) 1978 (2) SLR 868

[\[5\]](#) AIR 1964 SC 477

[\[6\]](#) (201

[\[7\]](#) (1999) 3 SCC 679

[\[8\]](#) (2006) 5 SCC 446

[\[9\]](#) (1994) 1 SCC 541

[\[10\]](#) (2015) 2 SCC 365