

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.10945 OF 2011

ORDER:

The petitioner joined as a Driver in the 2nd respondent - Corporation in the year 1990. He was assigned bus bearing No.AEZ 5232 to ply on Route No.60-C from Aarilova Colony to Head Post Office. It appears that when the bus reached Hanumanthwaka and Bajaj Company on National Highway No.5, in order to accommodate a truck overtaking the bus, the driver of the bus moved it on its left side, which resulted in hitting the cyclist, who succumbed to grievous injuries on the spot. On the allegation of rash and negligent driving, a crime was registered in III Town (Traffic) Police Station, Visakhapatnam, and after investigation, a charge sheet was filed in C.C.No.723 of 1998. On the allegation of rash and negligent driving, the petitioner was acquitted by the criminal Court by judgment dated 14.02.2000.

2. On the allegation of rash and negligent driving, the petitioner was placed under suspension by order dated 23.11.1998 and was also served with the charge memo alleging rash and negligent driving and lack of anticipation while driving the bus. Enquiry was conducted and basing on the enquiry report submitted by the Chief Inspector (Enquiries), Visakhapatnam, the petitioner was removed from service on 07.06.1999. The appeal and the review filed against the said order of removal from service were rejected. Therefore, the petitioner raised an Industrial Dispute before the Industrial Tribunal-cum-Labour Court at

Visakhapatnam. The dispute was registered as I.D.No.76 of 2006 and the Tribunal rejected the dispute by award dated 28.01.2009. Aggrieved thereby, this Writ Petition is filed.

3. Heard Ms. Smita Y. Ghonsikar, learned counsel representing Sri K. Someswara Kumar, learned counsel for the petitioner, learned Government Pleader for Labour appearing for the 1st respondent and Ms. C. Avani Reddy, learned Standing Counsel for the 2nd respondent – Corporation.

4. Learned counsel for the petitioner would submit that there was no rash and negligent driving on the part of the petitioner. She states that the truck was fast approaching behind the bus with high speed and the driver of the truck was swerving suddenly creating a lot of nuisance and he was terrifying the bus driver forcing him to give way for the fast approaching truck. By that time, the bus was overloaded with 100 passengers. The petitioner had little discretion in controlling the fast approaching of the truck and in order to accommodate it, he had no option except to move the bus to the extreme left side of the road. At that time, the major concern of the petitioner was safety and security over the passengers travelling in the bus. In order to avoid the fast approaching truck and to save the passengers, the petitioner moved the bus on the left side of the road and in that process since he had very limited time to react, he could not notice the cyclist. Learned counsel would therefore submit that it is not a case of rash and negligent driving and the accident occurred due to rash and negligent driving of the truck driver. She further submits that

even in the above background, punishment of removal from service was disproportionate.

5. Placing reliance on the deposition of the petitioner and the Conductor of the bus, learned counsel for the petitioner would submit that the bus was at a very low speed and the petitioner was taking all the care while driving the bus. She would submit that the Labour Court erred in dismissing the claim from the proportionality of punishment on the ground of delay. She would further submit that after the orders of rejection by the appellate and the reviewing authorities, the petitioner was continuously pursuing with the authorities of the 2nd respondent - Corporation with the hope of getting some kind of succor to him and having made several representations and exhausted with the attitude of the 2nd respondent - Corporation, the petitioner finally raised the Industrial Dispute. There was no deliberate and wilful delay in approaching the Labour Court. The Labour Court erred in not condoning the delay and granting the relief of atleast substituting the punishment even though the Labour Court agreed that the punishment imposed is disproportionate to the delinquency.

6. Learned Standing Counsel for the 2nd respondent - Corporation submits that the evidence on record would clearly support that there was rash and negligent driving by the petitioner and he did not take minimum care in driving the vehicle on the road and due to his carelessness, a cyclist was killed. She further submits that it is not the first instance. Earlier, on three occasions for damaging the vehicle, costs were recovered from him and on

19.03.1997, he was visited with the punishment of withholding of one annual increment deferred for one year due to his rash and negligent driving. Within a short service of less than eight years, the conduct of the petitioner was not satisfactory and therefore he does not deserve any consideration. She further submits that the delay in approaching the Labour Court was not explained and on the categorical assertion of the petitioner, she would submit that no representation was submitted by him after the review petition was rejected.

7. The Enquiry Officer held the charges as proved and the disciplinary authority accepted the findings of the Enquiry Officer. The Labour Court has held that the accident occurred due to his misconduct.

8. This Court cannot re-appreciate the evidence as to whether there was rash and negligent driving by the petitioner. The main issue for consideration is as to whether the Labour Court erred in not exercising discretion under Section 11-A of the Industrial Disputes Act, 1947 (for short, 'the Act') in imposing punishment having agreed with the stand of the petitioner that the punishment of removal was excessive on the ground that he raised the dispute after long time.

9. With regard to the delay in raising an industrial dispute, the law is well settled. Though the Act does not prescribe any limitation in raising the dispute, the aggrieved workman should invoke the jurisdiction of the Industrial Tribunal/Labour

Court under Section 2-A (2) of the Act within the reasonable time. In the instant case, the review was rejected on 02.09.2000. In the affidavit filed in support of the Writ Petition, there was no explanation as to what happened after 02.09.2000 except making a vague averment that the petitioner was making representation after representation with a hope of re-consideration by the authorities of the Corporation, the petitioner did not invoke the jurisdiction of the Labour Court. No material in support of the said statement is filed. The 2nd respondent - Corporation denies the contention of the petitioner and asserts that after rejecting the order by the reviewing authority, no representations were submitted. Thus, the reasons for delay in approaching the Labour Court immediately after removal from the service or atleast after rejection of revision is not satisfactorily explained by the petitioner. In a given circumstance, this delay of five years can be considered as not undue delay and as stale claim to grant relief by exercising power under Section 11-A of the Act. However, as rightly contended by learned counsel appearing for the 2nd respondent - Corporation and as stated in paragraph No.3 of the counter affidavit, on 08.10.1992, 23.10.1992 and 18.06.1994, the petitioner caused damage to the vehicle of the 2nd respondent - Corporation and Corporation recovered the costs for the damage caused. On the allegation of rash and negligent driving, he was visited with the punishment of deferment of annual increment for one year, on 19.03.1997. Thus, prior to the alleged incident, the petitioner was involved on four occasions on the allegation of careless driving.

10. In view of the said background and at the time of accident occurred, the petitioner had hardly rendered seven years of service, this Court is not inclined to exercise equity jurisdiction to grant relief of imposing less severe punishment. Thus, though Labour Court was a bit harsh in not considering the issue of quantum of punishment and rejecting the claim on the ground of delay of little more than five years, but having regard to the past conduct of the petitioner, this Court is not inclined to upset the findings of the Labour Court and to grant an equitable relief.

11. The Writ Petition is accordingly dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, filed in this Writ Petition shall stand closed.

Date:20.09.2016

KH

P. NAVEEN RAO, J

