

HON'BLE SRI JUSTICE M.S.K. JAISWAL

WRIT PETITION No.21647 of 2005

ORDER:

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This writ petition is filed under Article 226 of the Constitution of India, questioning the order dated 05.11.2004 of the 1st respondent in rejecting the review petition of the petitioner.

Heard the learned counsel for the petitioner and the learned counsel for the respondents.

The case of the writ petitioner, in brief, is that the petitioner joined as Driver in the respondent Corporation on 05.04.1996 and on 01.01.1988 his services were regularised. On 31.10.2003, while he was driving Bus bearing AP11Z-1129 from Hyderabad to Bhanswada, at Rayancheruvu X Road, an accident occurred and motor cyclist lost his life. Initially, the petitioner was suspended on 16.12.2003 and after enquiry, he was removed from service on 23.04.2004. Aggrieved by the same, the petitioner preferred appeal before the 2nd respondent and by order dated 31.05.2004, the 2nd respondent ordered reinstatement while imposing punishment of deferment of annual increment for 2 years with cumulative effect, and further ordered that the period of removal shall be treated as not on duty. The petitioner against the said order filed review before the 1st respondent, but he was unsuccessful and hence filed the present writ petition.

The petitioner was charge sheeted with the following charges:

- 1) For having driven the Bus No.AP11Z-1129 in a rash and negligent manner without taking any precautionary measures and with lack of anticipation and hit a Motor Cycle bearing No.AP23:D 4080 at about 9.15 hours on 31.10.2003 while you were returning from Hyderabad to Banswada at Rayancheruvu X road as a result of which the Motor Cyclist Sri Sripal Reddy received serious head injuries and later died which constitutes misconduct in terms of

Regulation No.28 (ix) (a) and (b) of APSRTC Employees (Conduct) Regulations 1963.

- 2) For having driven the bus bearing No.AP11Z-1129 with a high speed on the route Hyderabad-Banswada which caused a fatal accident resulting a death of Motor Cycle bearing No.AP23-D-4080 which constitutes misconduct in terms of Regulation No.28 (xxiv) of APSRTC Employees (Conduct) Regulations, 1963.

The Enquiry Officer, having considered the explanation given by the petitioner-driver and the material placed by the Corporation held that the petitioner drove the bus at high speed at the time of accident and he is responsible for the death of the motor cyclist and found the charge No.2 is proved. Basing on the enquiry report, the 3rd respondent issued termination proceedings against the petitioner. When the matter went to the 2nd respondent-appellate authority, after reappraisal of the evidence of passengers and driver, held that both petitioner and the motor cyclist are responsible for the accident and having observed that the driver should be more cautious than the motor cyclist, taking a lenient view, ordered reinstatement of the petitioner into service, but without back wages and further imposed punishment of deferment of annual increment for a period of two years without cumulative effect. The 1st respondent-reviewing authority dismissed the review petition filed by the petitioner observing that the appellate authority already has taken lenient view and reinstated the petitioner into service.

The learned counsel for the petitioner submits that there is no negligence on the part of the petitioner and he has taken all necessary steps to avoid the accident, but the motor cyclist could not control his speed and hit one guard stone and sustained head injury and succumbed to injuries. He further submits both the enquiry officer as well as the appellate authority having observed that the petitioner has

taken all steps to avoid the accident, but the driver should be more cautious at that time and he is also responsible for the accident, imposed the said punishment, which is arbitrary. The learned counsel further submits that the criminal case registered against the petitioner was ended in acquittal. Therefore, the learned counsel for the petitioner submits that the punishment of deferment of annual increment is to be set aside and a direction may be given to pay the back wages with continuity of service.

On the other hand, the learned counsel for the respondent Corporation submits that the 2nd respondent-appellate authority has granted the relief out of humanitarian consideration and taken into consideration the age and family back ground of the writ petitioner and directed reinstatement and has rightly imposed minor punishment of deferring one annual increment. The learned counsel further submits that when the charges as such against a delinquent employee stand proved and if the Authority out of humanitarian consideration grant certain relief and refused to grant other benefits, the employee cannot seek restoration of all the benefits negated by the Authority in a writ petition.

The point for consideration is as to whether the writ petitioner is entitled to back wages and restoration of his annual increment and continuity of service.

Point:

After the accident, basing on preliminary enquiry report, the petitioner was placed under suspension from 16.12.2003. In the enquiry, the Superintendent (Traffic)/BSWD, by name M.V.Ramana, who conducted preliminary enquiry was examined and he stated that the bus was returning from Hyderabad to Banswada via Medak. At about 9.15 hours the bus was to pass Rayanchyeruvu X Roads. A motor cyclist, aged about 23 years was coming from the left side diversion road came suddenly, the driver was unable to see the motor cycle as there are bushes in the corner. To avoid the accident, the

driver went on his right side, but the motor cycle hit on the right side front bumper. As stated by the conductor, the bus hit motor cycle and motor cyclist fell on the right side of the road. The driver regularly performs duty as he is aware of the road and T-junctions and curves very well. He should have reduced the speed of bus at such place and should observe whether any vehicle or person coming and has to sound horn. The bus skidded about 70 feet at the accident spot, which shows that the bus at the time of accident was at high speed. Both motor cyclist and driver are responsible of the accident, but more responsibility lies on the bus driver.

The conductor-P.Krishna Murthy stated that when the bus was passing Rayancheruvu X roads, a boy, aged about 23 years came on motor cycle at high speed from the village approach road on the left side of the bus. The motor cycle could not be seen by the driver as there are sugar cane fields on both sides of the road. On seeing the motor cyclist, the bus driver applied brakes, reduced the speed of bus and swerved the bus to right side in order to save the bus hitting motor cyclist. The motor cyclist hit one of the ghat stones on the left side of the road and fell down in the bushes on right side of the road. He stated that neither the motor cyclist nor the motor cycle came in contact with the bus in any manner. The bus driver has taken all possible precautions to avoid the accident.

The conductor did not state that the bus hit the motor cycle and motor cyclist fell down, as stated by M.V.Ramana.

One Mohd.Issaaq and Jaya Raj, passengers of the bus, stated that they boarded the bus at Hyderabad to go to Banswada and occupied front seats of the bus. At about 9.15 hours when the bus was passing Rayancheruvu X roads, a motor cyclist came from left side approach road at high speed without taking notice of moving bus. The bus driver has applied brakes and swerved it to right side so as to save the motor cyclist. The motor cyclist went to extreme right side and hit one guard stone on right side and fell down in fields on right side of the

bus. Neither the motor cycle nor motor cyclist came in contact with the bus in any manner. It is due to rash and negligent driving of the motor cyclist, he lost control and resulted in the accident. They further stated that the bus driver tried his best to avert the accident and he is not at fault.

Only basing on the evidence of M.V.Ramana, the enquiry officer held that at the time of accident the petitioner/driver drove the bus at high speed and due to which the accident was occurred and recommended for removal of the petitioner.

However, the appellate authority having considered and observed that the petitioner/driver is not responsible for the accident, but however he should be more cautious at that time and bearing in mind that one young boy lost his life in the accident, imposed punishment of deferment of annual increment though ordered for reinstatement.

It is settled proposition of law that 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 the present, there is no evidence that the petitioner/driver is responsible for the accident occurred and as per the evidence of conductor and passengers, it is motor cyclist who came at high speed and he could not control the vehicle and hit a ghat stone on the left side of the road and sustained head injury. The eyewitnesses clearly stated that neither the motor cycle nor motor cyclist came in contact with the bus in any manner.

In ***Kuldeep Singh vs. the Commissioner of Police & Ors.***^[1]

the Hon'ble Supreme Court held as under:

“It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the Enquiry Officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the Appellate Authority.

But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictate of the superior authority.”

In the instant case also there is no evidence against the petitioner to prove that he is solely responsible for the accident. The conductor as well as the passengers clearly stated before the enquiry officer that the petitioner/driver made every effort to avert the accident, and due to rash and negligent driving of the motor cyclist the accident occurred and the motor cyclist is only responsible for the accident. More over, they further stated that the motor cyclist did not hit the bus and he hit one guard stone and fell down in the fields. In view of the above, I have no hesitation to hold that the finding recorded in the domestic enquiry is based on no evidence and is required to be interfered with.

For the reasons stated above, the orders of respondents Nos.1 to 3 are liable to be set aside and the petitioner/driver is entitled to be reinstated with continuity of service with all consequential benefits.

Accordingly, the Writ Petition is allowed. The impugned orders dated 05.11.2004, 31.05.2004 and 23.04.2004 of respondents Nos.1 to 3 are set aside and the respondents are directed to treat the petitioner as reinstated into service with continuity of service with full back wages and with all consequential benefits. The respondents are further directed to pay all the arrears of back wages and consequential benefits to the petitioner/driver within a period of 3 (three) months from the date of receipt of a copy of this order. In the circumstances, there shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

Date:26.02.2016

Dsr

[\[1\]](#) (1999) 2 SCC 10