

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Writ Petition No.4237 of 2001

ORDER:

This writ petition is filed by Andhra Pradesh State Road Transport Corporation (APSRTC) challenging the Award in I.D.No.99 of 1999 dated 23.10.2000 passed by the Industrial Tribunal-cum-Labour Court, Visakhapatnam directing the APSRTC to reinstate the 1st respondent/workman to his previous post with all back wages and continuity of service as illegal and invalid.

2) The 1st respondent was working as Cleaner in Maddilapalem Depot of APSRTC, Visakhapatnam and on the ground of his committing theft of 5 injectors from the Depot Stores on 15.11.1992 he was removed from service after conducting departmental enquiry holding that the charge was established. His appeal was also dismissed. Later C.C.No.617 of 1992 filed against him on the file of II Metropolitan Magistrate, Visakhapatnam was ended in acquittal. On the strength of said acquittal, the 1st respondent/workman filed review petition before the Regional Manager, Visakhapatnam but however, the said petition was dismissed by the Regional Manager holding that the acquittal in criminal case on the ground of benefit of doubt has nothing to do with the departmental proceedings. Aggrieved, the 1st respondent filed I.D.No.99 of 1999 on the file of Industrial Tribunal-cum-Labour

Court, Visakhapatnam wherein the learned Presiding Officer relying upon the decision reported in ***Capt. M. Paul Anthony vs. Bharat Gold Mines Limited and another***^[1] has held that since criminal case was ended in acquittal the dismissal order passed by the management pursuant to departmental enquiry was liable to be set aside and thus ordered for reinstatement of 1st respondent/workman to his previous post with all back wages and continuity of service.

Hence the writ petition by APSRTC.

3) Castigating the award of the Industrial Tribunal Sri S.V.Ramana, learned counsel for writ petitioner/APSRTC would argue that departmental proceedings and criminal case would proceed on different concepts, as in criminal case the prosecution has to prove the guilt of the accused beyond reasonable doubt whereas for proving the charge against the delinquent employee, preponderance of probability would be suffice and therefore, merely because the departmental proceedings and criminal case were conducted in respect of same subject matter and criminal case ended in acquittal, that *ipso facto* would not be sufficient for the employee to seek for reinstatement if he were found guilty in the departmental proceedings and terminated from service. He further argued that whether an employee is entitled for reinstatement on being acquitted in a criminal case depends upon the service rules. If the service rules stipulate that the employee who is terminated

from service on being found guilty in departmental proceedings shall be reinstated on his mere acquittal in criminal case, he will be so entitled and on the other hand, if the service rules specify that mere acquittal in a criminal case on technical ground will not be suffice for reinstatement and that it is only in case of honourable acquittal in criminal case the employee would be entitled to reinstatement, then the same principle need to be followed. He thus argued that the reinstatement of an employee depends on the service rules as has been laid down by the Apex Court in ***The Deputy Inspector General of Police and another vs. S.Samuthiram***^[2]. Learned counsel argued that in the instant case, the 1st respondent/workman was acquitted in C.C.No.617 of 1992 purely on technical ground as there was variation between the evidence of PWs.1 and 2 on one hand and PW3 on the other with regard to date of arrest and production of accused before the Magistrate and thus it was not an honourable acquittal and therefore going by the Apex Court Judgment the 1st respondent/workman does not deserve reinstatement. Learned counsel would thus submit that the Tribunal faltered in directing reinstatement of the workman solely basing on his acquittal on technical grounds. Since the award of the Tribunal was contrary to the dictum of the Apex Court the award is liable to be set aside, he argued.

4) _____ In oppugnation, learned counsel for 1st

respondent/workman vehemently argued that acquittal in the instant case was an honourable acquittal inasmuch as there was a grave inconsistency in the evidence of PWs.1 and 2 on one side and PW3 on the other in respect of alleged date of apprehension of the accused red-handed and his appearance before the Magistrate and this discrepancy had cut across the root of the prosecution case and therefore, it is preposterous to argue that the acquittal was a technical one. Since the acquittal was an honourable one, the Industrial Tribunal found him deserved for reinstatement and ordered accordingly.

5) Perused the record. The law relating to the impact of judgment in criminal cases on departmental proceedings is no more *res integra* as it was vividly discussed and dilated by Apex Court in **S. Samuthiram's** case (2 supra). It was held thus:

“Para-23. As we have already indicated, in the absence of any provision in the service rule for reinstatement, if an employee is honourably acquitted by a Criminal Court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his

wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say in the instant case, the Respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.(emphasis supplied)

Para-24. We have also come across cases where the service rules provide that on registration of a criminal case, an employee can be kept under suspension and on acquittal by the criminal court, he be reinstated. In such cases, the reinstatement is automatic. There may be cases where the service rules provide in spite of domestic enquiry, if the criminal court acquits an employee honourably, he could be reinstated. In other words, the issue whether an employee has to be reinstated in service or not depends upon the question whether the service rules contain any such provision for reinstatement and not as a matter of right. Such provisions are absent in the Tamil Nadu Service Rules." (emphasis supplied)

Thus, the Supreme Court observed:

- (i) The standard of proof required for holding a person guilty in criminal case and in departmental enquiry is entirely different. In criminal case the onus is on the prosecution to establish the guilt beyond reasonable doubt, but the strict burden of proof is not required in disciplinary proceedings and preponderance of probabilities is sufficient.
- (ii) Mere acquittal of employee by a criminal court is not sufficient for his reinstatement as a matter of right and on the other hand, his reinstatement into service depends on the question whether the service rules indeed contain a provision for reinstatement or not.
- (iii) When service rules provide that on registration of criminal case an employee can be kept under suspension and on acquittal by criminal court, he be reinstated, in such a case the reinstatement is automatic.
- (iv) If service rules provide that inspite of termination of service on being found guilty in domestic enquiry, the employee can be reinstated if criminal court acquits him honourably, then he will be entitled for reinstatement on

securing honourable acquittal in criminal case.

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6) Keeping in view the above principles the facts in the instant case are scrutinized. In the instant case, the departmental enquiry report was submitted on 05.07.1993 wherein the charge of theft of 5 injectors was held established and accepting the report the 1st respondent/workman was removed from service as per the proceedings No.P3/417(2)/92-MDP dt.30.07.993. The appeal preferred against the said proceedings was also dismissed on 30.12.1997. However, pending appeal the 1st respondent/ workman was acquitted in C.C.No.617 of 1992 by II Metropolitan Magistrate, Visakhapatnam in his judgment dated 06.02.1995. On the strength of the aforesaid judgment, it appears, the 1st respondent/workman filed a review petition but the same was also dismissed by the Regional Manager in his proceedings dated 31.10.1998.

7) Be that as it may, a perusal of the judgment in C.C.No.617 of 1992 would show that it was a case of technical acquittal rather than an honourable one. The criminal court found discrepancy in the evidence of PWs.1 and 2 on one hand and PW3 on the other to the effect that PWs.1 and 2 claimed to have caught the accused red-handed on 15.11.1992 at 1 PM but on the other hand PW3 said to have produced the accused before the Court only on 17.11.1992 at 3 PM. The court observed that there was no explanation for the delay of two

days in submitting the FIR to court and also producing the accused before the court. The trial Court did not discuss the aspect as to whether the claim of PWs.1 and 2 that they caught the accused red-handed was believable or not. Thus, in my opinion, the acquittal was technical in nature. However, going by the principle laid by the Apex Court as above, more than the nature of acquittal, the existence of a provision in the service rules for reinstatement is important. The Apex Court laid down that mere acquittal will not create any right to the employee to claim reinstatement unless service rules contain a provision to that effect. The Apex Court further clarified if the service Rules lay that an employee terminated from service basing on the disciplinary proceedings shall be reinstated if he gets acquittal in criminal case, then he shall be entitled for reinstatement on mere acquittal. On the other hand, if the service rules specify that the employee shall be reinstated only if he gets honourable acquittal, then he will be deserved only on securing honourable acquittal and not otherwise. So, the emphasis of the decision of the Apex Court is on the embodiment of a provision in the service rules rather than the nature of acquittal.

8) In the instant case, service rules of APSRTC department relating to relevant period were not produced before this Court by the writ petitioner to know whether the rules in fact contain any provision as to reinstatement on acquittal. The burden is heavy on the writ petitioner to produce the service rules relating to the period of 1992 applicable to the 1st respondent to show

that rules do not contain a provision for reinstatement on acquittal on technical ground. Since the writ petitioner failed to produce the relevant rules, it cannot, in my considered opinion, contend that the acquittal in the instant case is only a technical one and therefore 1st respondent does not deserve reinstatement. For non-production of relevant service rules of the year 1992 applicable to the 1st respondent, adverse inference is liable to be drawn against the writ petitioner to the effect that if produced, service rules would contain a provision to the effect that mere acquittal in criminal case would be suffice for reinstatement. Incidentally, the Circular No.48/95-OPD(T) dt.21.07.1995 is brought to the notice of this Court. It must be said that the said circular was said to be issued on 21.07.1995 and therefore, it has no relevancy to the date of incident in the instant case. Further, the said circular relates to the procedure followed for suspending RTC drivers and for their reinstatement. It was held in the said circular that if the acquittal is on technical ground the drivers are not entitled to reinstatement into service. Be that as it may, the said circular has no relevancy because it applies only to the drivers and also relates to a different period. In the above circumstances, the reinstatement ordered by the Industrial Tribunal cannot be found fault.

9) In the result, I find no merits in the writ petition and accordingly the writ petition is dismissed. No costs.

As a sequel, miscellaneous petitions pending if any, shall

stand closed.

U. DURGA PRASAD RAO, J

Date: 27.08.2016

Murthy

[\[1\]](#) (1999) 3 SCC 679

[\[2\]](#) (2013) 1 SCC 598