

*** HON'BLE SRI JUSTICE M.SATYANARAYANA**
MURTHY

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+ WRIT PETITION No. 3928 OF 2001

% 05.02.2016

M. Sitaram, S/o.Gangya, 41 years,
Occ: Driver, R/o.Kasab Tanda, Narsingapalli,
Via Dharmaram, Nizamabad District.
Petitioner

AND

\$ A.P.State Road Transport Corporation,
Bus Depot, Nizamabad, Nizamabad District,
Rep. by its Depot Manager.
.....Respondent

! Counsel for the petitioner : Sri V. Narsimha Goud

^ Counsel for respondent : Sri N. Vasudeva Reddy

< Gist:

> Head Note:

? Cases referred:

1. 2009 AIR SCW 5596
2. AIR 1964 SC 477
3. 2002 (6) ALD 778 (DB)
4. (2009) 15 SCC 620
5. (2015) 2 SCC 610
6. AIR 2012 SC 2986

THE HON'BLE SRI JUSTICE M.SATYANARAYANA
MURTHY

WRIT PETITION No.3928 of 2001

ORDER:

This writ petition is filed by the employee working in Andhra Pradesh State Road Transport Corporation, Nizamabad Depot (for short, 'respondent-Corporation') to quash the award dated 16.01.1998 passed in I.D. No.131 of 1996 on the file of the Labour Court-II, Hyderabad (hereinafter referred to as 'Labour Court'), published on 12.02.1998 by issuing writ of *certiorari* directing the respondent-Corporation to release the increments with back wages.

2. The petitioner joined in service as driver in the year 1987, discharged his duties, but removed from service by the respondent-Corporation by order dated 31.08.1995 on the ground of misconduct. Aggrieved by the removal order dated 31.08.1995, the petitioner preferred an appeal, which ended in rejection, confirming the order of the respondent-Corporation and, thereupon, raised a dispute before the Labour Court in I.D. No.131 of 1996. But the Labour Court converted the punishment of removal into stoppage of five increments with cumulative effect without back wages and ordered reinstatement treating the period of absence as on leave.

3. The main contention of the petitioner is that while he was on duty as driver on the vehicle bearing registration No.AP 9Z 6874 on 20.02.1995, when it reached opposite Boregaon at about 10-30 hours, hit another vehicle which came in opposite direction. The

respondent-Corporation found the petitioner guilty for gross misconduct as per Regulation 28(ix-b) & (xxix) of the Andhra Pradesh State Road Transport Corporation Employees (Conduct) Rules, 1963 (for short, '1963 Rules'). The petitioner submitted an explanation stating that the vehicle was proceeding with 105 passengers and a bullock cart with sugar cane was proceeding ahead to the bus, therefore, to overtake the said bullock cart, the vehicle was swerved towards right side, in the said process, the petitioner observed a lorry coming in the opposite direction at high speed and applied sudden brakes and stopped the vehicle, however, on account of rash and negligent act of driver of the lorry, the accident occurred. Thus, the accident occurred only due to the rash and negligent act on the part of the driver of the lorry, but not of the petitioner.

4. Immediately after the accident, the place of accident was inspected by the Inspector of Police, recorded statement of the conductor of the bus and the petitioner explained the circumstances which lead to the accident.

5. Though the petitioner explained cause for the accident, the respondent-Corporation found the petitioner guilty in the domestic enquiry and imposed penalty of removal which was confirmed by the appellate authority, but the same was converted into stoppage of five

increments with cumulative effect without back wages and ordered reinstatement treating the period of absence as on leave. The Labour Court also did not take into consideration the circumstances lead to the accident and failed to consider the evidence on record. The Labour Court also did not consider rash and negligent act of driver of the lorry which is the main cause for the accident and came to a conclusion that the petitioner is guilty of gross misconduct and imposed penalty of stoppage of five increments.

6. Sri V. Narsimha Goud, learned counsel for the petitioner, contended that the accident occurred only due to the negligence of driver of the lorry and the petitioner took every precaution to avert the accident and stopped the bus noticing the lorry coming in the opposite direction, but the Labour Court on erroneous appreciation, found the petitioner guilty without proper appreciation, and if the totality of circumstances which lead to the accident were taken into consideration, the Labour Court ought not to have found the petitioner guilty of gross misconduct and requested this Court to reappraise entire material on record and, that apart, the penalty of stoppage of five increments with cumulative effect without back wages treating the period of absence as on leave is shockingly disproportionate to the gravity of misconduct, and, therefore, this Court can interfere if it is found that the penalty imposed against the employer is shockingly

disproportionate. He placed reliance on the following judgments in support of his contentions:

- (1) **Chairman-cum-Managing Director, Coal India Ltd. and another Vs. Mukul Kumar Choudhuri and others** [\[1\]](#)
- (2) **Syed Yakoob Vs. K.S. Radhakrishnan and others** [\[2\]](#)

7. Learned counsel for the respondent refuting the contentions, would submit that the scope of power of judicial review under Article 226 of the Constitution of India is limited and unless the Court finds that the penalty imposed against the employer is shockingly disproportionate, normally, the Courts would not interfere while exercising power of judicial review under Article 226, and that this Court cannot interfere with the fact findings recorded by the disciplinary authority and the Tribunals.

He placed reliance on the following judgments:

- (1) **APSRTC, Armoor Depot, Nizamabad District Vs. S. Ramachander and another** [\[3\]](#)
- (2) **Chairman-cum-Managing Director, Coal India Limited and another Vs. Mukul Kumar Choudhuri and others** [\[4\]](#)
- (3) **Union of India and others Vs. P. Gunasekaran** [\[5\]](#)

8. In the present case, on account of accident, there are three casualties and it occurred only on account

of gross misconduct of the petitioner. In such case, the petitioner is guilty of gross misconduct under Regulation No.28(ix-b) of Rules 1963 and prayed to dismiss the writ petition.

9. In view of the rival contentions, the point that arises for consideration is:

Whether the petitioner is guilty of gross misconduct, as defined under Regulation No.28(ix) of 1963 Rules, if so, this Court, while exercising power of judicial review under Article 226 of the Constitution of India, can interfere with the fact findings recorded by the Tribunal and set aside the penalty imposed against the petitioner ?

POINT:

10. The main grievance of the petitioner is that while the bus was proceeding with 105 passengers at Boregaon, a double bullock cart with load of sugar cane was found proceeding ahead of the bus and to overtake the bullock cart, the petitioner took the vehicle to right side, and, in the process, noticed a lorry coming in opposite direction, driven at high speed and stopped the vehicle. But the lorry, due to rash and negligent driving of its driver, hit the bus, which resulted in three casualties, besides causing grievous injuries to other passengers. The inquiry officer considered the material and concluded that the accident occurred only due to rash and negligent act of the petitioner. The appellate authority confirmed the

said fact findings and the Labour Court also accepted that the accident occurred only due to rash and negligent act of the petitioner. So, the concurrent fact findings recorded by the Appellate Authority and the Labour Court cannot be interfered by this Court while exercising power of judicial review, unless, there is gross failure of consideration of evidence by the Tribunal and disciplinary authority.

11. 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 had an occasion to decide what acts amount to "negligence" in **Ravi Kapoor Vs. State of Rajasthan**^[6], analysed the concept of negligence and following the definition of 'negligence' in *Halsbury's Laws* and dictionary meaning as follows:

"What constitutes negligence has been analysed in *Halsbury's Laws of England* (4th Edn.), Vol.34, Para 1 (p 3) 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 "

12. In view of the principles laid down in the judgment of the Apex Court, if the driver established that he had taken reasonable care while driving the vehicle, as an ordinary prudent driver, he would not be found guilty for negligence based on the doctrine of reasonable care. Here, the petitioner though observed that the lorry was coming in the opposite direction at high speed, driven by its driver, just stopped the vehicle without making any attempt to take the vehicle to any side of the road to avoid head-on-collision between the bus and the opposite lorry. When the petitioner noticed a lorry coming in opposite direction at high speed, he would have made sincere and honest attempt to avert the accident as an ordinary prudent driver as life of 105 passengers is at stake.

13. The reasonable care taken by the petitioner has to be established by examining any of the witnesses, i.e., any of the passengers travelling in the vehicle or by examining any person who directly witnessed the

accident, to prove reasonable care taken by the petitioner on noticing the lorry coming in opposite direction at high speed, but no evidence is brought on record to prove the contention of petitioner. Therefore, the Inquiry Officer, Appellate Authority and the Labour Court held that the petitioner was grossly negligent and recorded concurrent fact findings.

14. According to Regulation 28(ix) of 1963 Rules, causing serious loss to the respondent-Corporation or inconvenience to the public or both due to gross negligence amounts to misconduct. In the present facts of the case, the petitioner failed to take reasonable care as an ordinary, prudent driver, which resulted in accident and that there are three casualties, i.e., death of three passengers travelling in the bus, injuries to several passengers, besides damage to the bus. On account of deaths, the respondent-Corporation was made liable to pay compensation. In other words, the conduct of the petitioner caused serious loss to the respondent-Corporation and inconvenience to the public. Therefore, the act of the petitioner would fall within the definition of gross negligence.

15. Learned counsel for the petitioner placed reliance on **Mukul Kumar Choudhuri** case (1 supra) to contend that when the petitioner/employee had no intention to disobey the orders of the higher authority or

disobey the Rules of the respondent-Corporation, order of removal cannot be justified in such case, but denied back wages by way of punishment for proved misconduct. In the said case, the Apex Court held that when the Tribunal and High Court found that the petitioner had no intention to disobey the orders of the higher authorities, he is liable to be reinstated. In the present case also, the petitioner did not disobey the orders of the higher authority, but the conduct of the petitioner lead to an accident causing three casualties and serious loss to the respondent-Corporation. Therefore, the principle laid down in the above judgment has no direct application to the present facts.

16. So far as scope of judicial review is concerned, learned counsel for the petitioner drawn attention of this Court to **Syed Yakoob** case (2 supra), 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. It further held that 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. It further held that 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*. It further held that 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 the High Courts under Article 226 to issue a writ of *certiorari* can be legitimately exercised.

17. In **P. Gunasekaran** case (5 supra), 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 further held that it can interfere where finding is wholly arbitrary and capricious based on no evidence which no reasonable man could ever arrive at.

18. The principle laid down in the above judgment

is almost identical to **Syed Yakoob** case (2 supra).

19. In view of the law declared by the Apex Court, it is clear that unless the Court finds that there is grave irregularity in conducting enquiry in deviation of Rules, or the Tribunal admitted inadmissible evidence or failed to admit the admissible evidence in recording a fact finding. But here, the petitioner did not bring to the notice of this Court any such instances to interfere with the finding except contending that the penalty imposed against the petitioner is disproportionate. Therefore, I am afraid to interfere with the fact findings recorded by the Tribunal holding that the petitioner is guilty of gross misconduct.

20. The main endeavour of the learned counsel for petitioner is that the punishment of stoppage of five increments with cumulative effect treating the period of absence as on leave, while reinstating the petitioner into service is shockingly disproportionate and the Court can interfere while exercising power of judicial review. Whereas, the learned counsel for the respondent-Corporation contended that when the petitioner is responsible for causing death of three passengers by his negligent act, besides causing damage to the bus belonging to the respondent-Corporation, as such, punishment is not disproportionate and commensurate with gravity of misconduct and the same cannot be interfered with while exercising power of judicial review.

21. In view of rival contentions, this Court must look into the facts to find out whether the penalty imposed against the petitioner is shockingly disproportionate and, if it is so, the same is liable to be set aside.

22. Undisputedly, in the accident, there are three casualties besides causing grievous injuries to other passengers and damage to the bus. When three persons lost their lives in the accident due to negligence, the respondent-Corporation was forced to pay compensation for the negligent act of its employee basing on doctrine of vicarious liability. Apart from that, the dependents of deceased persons were put to a sudden grief and total inconvenience in future life. Thus, the person who is responsible for the death of three persons due to his negligence cannot be let off, imposing any minor punishment in the disciplinary enquiry. Therefore, penalty of stoppage of five increments with cumulative effect, treating the period of absence as on leave while reinstating cannot be said to be disproportionate to the gravity of misconduct of the petitioner, viewed from any angle.

23. In **Mukul Kumar Choudhuri** case (4 supra), the Apex Court held that while exercising power of judicial review, it is not open to the High Court to examine findings recorded by the inquiry officer as a court of appeal and reach its own conclusions and the power of judicial review

is not directed against the decision, but is confined to the decision-making process, and, in the absence of any procedural illegality or irregularity in conduct of departmental enquiry, it has to be held that charges against delinquent stood proved and the Court, if finds that penalty imposed against the employee is disproportionate, may interfere with the punishment. In the above case, the employee was charged for his unauthorized absence, but the employee admitted his guilt fairly and, thereupon, he was removed finding him guilty of misconduct and such removal is disproportionate, harsh and grossly excessive. Therefore, the Apex Court directed the employer to reinstate the employee holding that the employee was not entitled to back wages from the date of his removal, till reinstatement.

24. In view of the law declared by the Apex Court, it is clear that the High Court, while exercising power of judicial review, cannot interfere with the fact finding recorded by the Labour Court except in the circumstances stated above, and that unless the penalty imposed against the charged employee is shockingly disproportionate, this Court cannot interfere with the punishment. In the present facts of the case, no irregularity is brought to the notice of this Court in appreciation of evidence by the Tribunal and when the Disciplinary Authority, Appellate Authority and the Labour Court concurrently held that the petitioner is guilty of gross

negligence which amounts to misconduct under Regulation No.28(ix) of 1963 Rules, the same cannot be interfered as nothing was brought to the notice of this Court about the admission of any inadmissible evidence or failure to admit the admissible evidence by the Tribunal and Inquiry Officer or violation of the statutory procedure for disciplinary enquiries. At the same time, the punishment imposed against the petitioner is totally proportionate to the gravity of misconduct, since the petitioner is responsible for death of three passengers, besides causing grievous injuries to the other passengers travelling in the bus by paying fare to reach their destination and also caused damage to the bus. Hence, there are no grounds to set aside the penalty/punishment imposed against the petitioner, while exercising power of judicial review under Article 226 by way of writ of *certiorari*. Accordingly, this point is answered against the petitioner and in favour of the respondent-Corporation.

25. In the result, the Writ Petition is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any pending in this writ petition, shall stand closed.

MURTHY, J.

M.SATYANARAYANA

Date: 05 -02-2016

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[\[1\]](#) 2009 AIR SCW 5596
[\[2\]](#) AIR 1964 SC 477
[\[3\]](#) 2002 (6) ALD 778 (DB)
[\[4\]](#) (2009) 15 SCC 620
[\[5\]](#) (2015) 2 SCC 610
[\[6\]](#) AIR 2012 SC 2986