

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION NO.1714 of 2011

Between:

Subbaiah, s/o. Abraham, aged, 48 years,
Occ:Ex.Driver, E.No.405647, R/o. S.C.Colony,
Alamkhanpelly Mandal and Kadapa district.

.....Petitioner

And

The Depot Manager, APSRTC, Bus Depot,
Kadapa, Kadapa District and others.

.....Respondents

DATE OF JUDGMENT PRONOUNCED : 18.08.2016

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THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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1. Whether Reporters of Local Newspapers : No
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : **Yes**
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

***THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

+ WRIT PETITION NO.1714 of 2011

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Subbaiah, s/o. Abraham, aged, 48 years,
Occ:Ex.Driver, E.No.405647, R/o. S.C.Colony,
Alamkhanpelly Mandal and Kadapa district.

... Petitioner

Vs.

\$ The Depot Manager, APSRTC, Bus Depot,
Kadapa, Kadapa District and others.

.... Respondents

!Counsel for the petitioner : Sri V.Narsimha Goud

Counsel for the Respondents : Sri Aravala Rama Rao, standing
Counsel for APSRTC for
respondents

<Gist :

>Head Note:

? Cases referred:

1. 1995-1 LLN 59
2. (2006) 8 SCC 108
3. (2006) 12 SCC 570
4. (2015) 2 SCC 610
5. 2002 (1) ALD 64 (DB)
6. 2002 (6) ALD 778 (DB)
7. 2014 (4) ALD 481
8. AIR 1980 SC 1896

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HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION No.1714 of 2011

ORDER

Petitioner was entrusted with vehicle bearing No.AP-10Z- 8272 on the route from Kurnool to Kadapa on 29.12.2004. The vehicle met with fatal accident at about 8.15 PM. The driver took the bus to the extreme left side of the road and hit the tractor stationed in the left margin of the road and due to the impact, the tractor moved away from the stationed place resulting in fatal injuries to the driver of tractor who succumbed to injuries. Alleging rash and negligent driving, disciplinary proceedings as well as criminal prosecution was launched against petitioner. He was placed under suspension and charge memo dated 01.02.2005 was drawn. The sum and substance of the allegations in the charge sheet is the rash and negligent driving with high speed with lack of anticipation. Enquiry Officer was appointed to enquire into the allegations. Enquiry Officer submitted his report dated 01.06.2005. Enquiry Officer observed that as per the report of the Traffic Inspector of Allagadda Depot, the bus dashed the stationed tractor trolley from back side. Thus, he assumes that bus went on high speed and bus driver took the bus to the very left side margin without observing anything on the road. The enquiry officer further observed that the bus driver ought to have taken precautions and he ought not to have driven the bus with high speed when road is not visible to him due to vehicle

coming from opposite side. He, therefore, held that the bus driver was rash and negligent in driving the vehicle. However, the Enquiry Officer accepts the defence of the driver as well as the conductor of the bus that the tractor trolley was stable at road side without parking lights or any other signal and held that the tractor driver was also partly responsible for the accident. Disciplinary Authority, by order dated 11.07.2005, imposed the punishment of removal from service. The appeal and revision filed by petitioner were rejected. Petitioner raised industrial dispute vide I.D.No.197 of 2006. Labour Court passed Nil award, impugned in this writ petition. To complete the narration, petitioner was also implicated in criminal case in C.C.No.330 of 2005 on the file of the Judicial First Class Magistrate, Allagadda. The charge in the criminal case was rash and negligent driving. Criminal Court acquitted the petitioner by judgment dated 02.04.2007.

2. Heard learned counsel for petitioner and learned Standing Counsel for respondent APSRTC.

3. Learned counsel for petitioner submitted that the Labour Court has not appreciated the contentions urged by the petitioner. It is elementary that the Labour Court must first decide whether the disciplinary proceedings were validly conducted as a preliminary issue and only after a finding is recorded, ought to proceed further in the dispute. Whereas, in the instant case, no such finding was recorded and straight-away issue was considered.

3.1. He would further submit that in the disciplinary proceedings, the enquiry officer has recorded a finding that the driver of the tractor is also partly responsible for the accident. Elaborating the said finding, learned counsel for the petitioner would submit that the vehicle was moving during night time; the tractor was parked on the left side of the road without any indication of such parking. Due to night time, as no indication was given about parking of the vehicle, petitioner could not

spot the parking of the tractor on the left side of the road. Simultaneously, a vehicle with high speed coming from the opposite direction, the truck ahead of him moved first to right and then to left of the road and on seeing the vehicle fast approaching his bus, in order to avoid upcoming vehicle, petitioner moved the bus to the left side of the road. In the process, bus hit tractor stationed on the road margin. He would therefore submit that due to wrong parking of the tractor, accident caused and petitioner cannot be held responsible.

3.2. By placing reliance on the judgment of the criminal Court, he submitted that since petitioner was acquitted of the allegation of rash and negligent driving, the question of taking disciplinary action on the very same allegation would not arise.

3.3. By placing reliance on the decision of this Court in DEPOT MANAGER, APSRTC, BUS DEPOT, KHAMMAM vs. INDUSTRIAL TRIBUNAL CUM LABOUR COURT, WARANGAL AND OTHERS^[1], he would submit that due to the negligence of tractor driver petitioner cannot be penalized. He, therefore, submit that punishment is wholly unsustainable.

3.4. Learned counsel further submits that the Labour Court proceeded on the wrong premise; has not evaluated the evidence on record; and has not appreciated the contentions. The decision relied upon by the Labour Court was on the issue of proportionality of punishment and has no application to the issue considered by the Labour Court. The findings of the Labour Court are based on surmises and conjectures and are not based on evidence.

4. Learned Standing Counsel submits that the order impugned is validly made. According to him, the driver was responsible for causing the accident which resulted in death of the driver of tractor. He submits that the driver ought to have been careful in driving the vehicle and

ought not to have driven the vehicle with high speed. The fact that the fully loaded tractor moved away by 15 feet due to impact would disclose that the bus was at high speed. He further submits that he could have easily controlled, if he was conscious and driven the vehicle carefully taking note of vehicles coming in opposite direction. He, therefore, submits that the accident occurred due to rash and negligent driving of the bus driver, and on due consideration of the evidence on record, decision to impose punishment of removal was made and that the disciplinary authority has taken note of all the facts before imposing the punishment. He would therefore justify the decision of the disciplinary authority as well as the finding recorded by the Labour Court in rejecting the claim of petitioner. He further submits that the question of imposing any other punishment would not arise once the allegation of rash and negligence is proved.

4.1. He would further submit that once the charge is held proved, it is for the employer to impose appropriate punishment and that Court cannot interfere on quantum of punishment nor can substitute the punishment. In support of his contention, learned Standing Counsel placed reliance on following decisions:

i) U.P.STATE ROAD TRANSPORT CORPORATION, DEHRADUN v.

SURESH PAL^[2];

ii) MANAGING DIRECTOR, NORTH-EAST KARNATAKA ROAD TRANSPORT CORPORATION v. K.MURTI^[3];

iii) UNION OF INDIA AND OTHERS v. P. GUNASEKARAN^[4]; and

iv) W.P.No.8225 of 2001 dated 21.01.2016.

5. The plea taken by the petitioner in the industrial dispute was that the accident occurred due to wrong parking of the tractor, which was not visible as there was no parking light and there was no indication from the tractor driver about such parking. There was a truck in front of him and the truck driver driven the vehicle first to the right and then to

the left of the road to avoid opposite vehicle. Petitioner had no option but to move his vehicle to the extreme left of the road to avoid the vehicle coming from opposite direction. Due to this sudden development, petitioner could not notice the parking of the tractor. The defence taken by the petitioner was not considered by the Labour Court. The Labour Court accepted the contention of the respondent that since rash and negligent driving is proved, merely because the petitioner was acquitted by the criminal Court cannot be a ground in exonerating him from the allegations and to impose any other punishment other than the punishment of removal.

6. It is appropriate to notice the point framed by the Labour Court for consideration. It reads as under:

“Whether the enquiry is conducted against the principles of natural justice? Whether the order of removal against the petitioner is proportionate? To what relief the petitioner is entitled?”

7. The Labour Court held that “petitioner failed to take precautionary measures in averting the accident. A required distance has to be maintained while driving the vehicle, even though the front going driver was too hasty in his driving and negligently driving the vehicle, the petitioner could have slowed down the vehicle.” It further observed that petitioner failed to notice the stationed tractor on the road margin and failed to take precautionary measures in averting the accident. A reading of the award would disclose that the Labour Court was more anxious about the death of the driver of tractor in the accident caused by petitioner.

8. Based on the findings of the enquiry officer and the Labour Court, it cannot be said that petitioner was fully responsible for causing the accident. The factual background as noted above would disclose that a truck was proceeding ahead of petitioner’s bus and because the truck was trying to turn the vehicle to right and then to the left of the road, petitioner had very little time to maneuver his bus to avoid the collusion against upcoming vehicle. Thus, petitioner turned the

vehicle to extreme left. It can be assumed that petitioner was taking care to avoid the accident and to save the lives of passengers travelling in the bus. There is nothing on record to show that parking lights of the tractor were blinking or there was some indication of stationing of the tractor and trolley on the road margin. Therefore, it cannot be expected from a driver, when he was trying to avoid the upcoming vehicle and turning the bus towards left, that there was a stationed tractor on the road margin even though the tractor driver did not observe the basic required precautions while parking the vehicle on the road margin during night time. As noticed from the findings of the enquiry officer, he held that the tractor driver was also responsible for the accident. The Labour Court found that the driver of truck ahead of petitioner bus was not diligent. It is also appropriate to notice that after due consideration, the criminal Court discharged him of the charge of rash and negligent driving.

9. Though point for consideration was formulated, that point was not considered by the Labour Court in true perspective with reference to the evidence on record and the contentions urged by petitioner. The Labour Court proceeded more on the stand of respondent on proportionality of punishment vis-à-vis the acquittal granted by the criminal Court and the factum of death of tractor driver. The award of Labour Court is vitiated with fundamental flaw.

10. Based on finding of the enquiry officer, it cannot be said that petitioner is totally not responsible for causing the accident. There is an element of negligence on the part of petitioner. He ought to have taken proper care to ensure safety of passengers as well as road side parked vehicles. Due diligence was missing. However, in the facts and circumstances of this case, it cannot be said that the petitioner was wholly responsible to cause accident, so as to result in imposing extreme penalty of removal from service. In the light of the conclusions arrived at by the enquiry officer and the Labour Court and the material

on record, the punishment of removal is not commensurate, grossly excessive and disproportionate to the nature of delinquency alleged and proved. In the above analysis, it shocks the conscience of this Court. The removal deprives bread winner to the family, disturbs the family fabric and dislocates them. It would be a serious blow to the entire family.

11. In the facts of this case, as analyzed above, the decisions relied upon by the learned standing counsel do not come to the rescue of the respondent corporation.

12. The issue relates to the year 2005. In the peculiar facts of this case, this Court is of the opinion that instead of remanding the matter to the disciplinary authority to consider imposing appropriate punishment, the controversy needs to be set at rest.

13. On the scope of this Court to impose appropriate punishment instead of remitting the matter for consideration afresh on the quantum of punishment in cases arising out of Industrial Disputes Act, learned counsel for petitioner placed reliance on the following decisions:

i) P.RAJANNA v. LABOUR COURT, GODAVARIKHANI AND ANOTHER^[5];

ii) APSRTC, ARMOOR DEPOT, NIZAMABAD DISTRICT v. S.RAMACHANDER AND ANOTHER^[6];

iii) P.G.SHIVA SHANKER v. MANAGING DIRECTOR, APSRTC, HYDERABAD AND ANOTHER^[7];

iv) GUJARAT STEEL TUBES LTD. AND ORS. Vs. GUJARAT STEEL TUBES MAZDOOR SABHA AND ORS.^[8]

14.1. In **P.Rajanna**, Division Bench of this Court held that Labour Court has discretionary power under Section 11-A of Industrial

Disputes Act, 1947 (for short, 'Act, 1947') to alter or modify the penalty imposed by the Disciplinary Authority, if it is of the opinion that the penalty imposed by the Disciplinary Authority, in the facts and circumstances of the case, is disproportionate to the gravity of the misconduct. It is further observed that it is also a well settled proposition that this Court also while reviewing the industrial ward under Article 226 of the Constitution of India, in appropriate cases, can exercise the same power, which is available to the Labour Court under Section 11-A of the Act (para-10).

14.2. The said principle is reiterated by the learned single Judge of this Court in **P.G.Shiva Shanker**.

14.3. Similar issue was considered by this Court in **Depot Manager, APSRTC, Bus Depot, Khammam** (supra). In the said case also, it was alleged that accident did not occur on account fault of the driver alone, but the lorry driver also contributed towards the accident. Based on the said finding, Labour Court held that punishment of removal was excessive and modified the punishment. This Court affirmed the decision of the Labour Court.

14.4. On the scope of jurisdiction of the writ Court under Article 226 of the Constitution in **Gujarat Steel Tubes Ltd** (supra), Supreme Court held as under:

“146. In the second chapter of our sum up, the first thing we decide is that Article [226](#), however restrictive in practice, is a power wide enough, in all conscience, to be a friend in need when the summons comes in a crisis from a victim of injustice ; and, more importantly, this extraordinary reserve power is unsheathed to grant final relief without necessary recourse to a remand. What the Tribunal may, in its discretion, do, the High Court too, under Article [226](#), can, if facts compel, do. ”

15. In the instant case, petitioner was recruited as Driver in the year 1990 and by the time he was removed from service, he had completed 15 years of service. It is not denied that petitioner had good record of service until impugned action was taken. As noted above, it cannot be

said that petitioner was wholly responsible for causing accident, though there was some element of not observing due diligence. Thus, in the facts of the case, punishment of removal was not warranted. Guided by the principle laid down by the Supreme Court and the Division Bench of this Court referred to above, in the facts of this case, I am of the opinion that the punishment of removal be modified to that of reduction by three stages in the time scale of pay attached to the post of Driver, which would have effect of permanent forfeiture, and petitioner is not entitled to back-wages for the period of out of employment. However, the said period shall be treated as continuous service for other service benefit, including determination of notional increments. It is made clear that petitioner is not entitled to claim the period of out of employment for the purpose of accumulation of earned leave.

16. Writ petition is allowed accordingly. No costs. Miscellaneous petitions if any pending shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 18.08.2016

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HON'BLE SRI JUSTICE P.NAVEEN RAO

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[\[1\]](#) 1995-1 LLN 59

- [\[2\]](#) (2006) 8 SCC 108
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- [\[5\]](#) 2002 (1) ALD 64 (DB)
- [\[6\]](#) 2002 (6) ALD 778 (DB)
- [\[7\]](#) 2014 (4) ALD 481
- [\[8\]](#) AIR 1980 SC 1896