

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION No.4150 of 2004

ORDER:

The writ petition is filed under Article 226 of the Constitution of India by the petitioner – A.P.S.R.T.C. seeking a writ of Certiorari calling for the records relating to the impugned award dated 19.09.2003 made in I.D.No.128 of 2000, Labour Court-II, Hyderabad setting aside the order of removal dated 30.05.1998 and directing reinstatement of first respondent into service with continuity of service and notional increments, but without back wages and imposing duly a minor penalty of withholding of two annual increments with cumulative effect and quash the same as being illegal, without jurisdiction and invalid and to pass such other necessary orders.

No representation on behalf of the first respondent on 13.04.2016 and today also. Hence, this Court is inclined to dispose of the matter on merits.

The contention of the learned counsel for the petitioner is two fold:

1. The findings recorded by the Labour Court are perverse as the same are based on material which is not legally admissible;
2. The finding of the Labour Court that the accident occurred due to contributory negligence on the part of the first respondent and the scooterist is not supported by any material.

The facts leading to filing of the present petition are briefly as follows:

The first respondent herein was appointed as a driver on

daily wage basis in the month of November 1987 by the petitioner - Corporation. His services were regularized on 01.07.1991. On 22.10.1996, the first respondent was proceeding to Nizamabad from Armoor while driving the bus bearing No.AP 10-Z-736 when the bus reached Koadthal village, first respondent drove the bus in a rash and negligent manner, dashed against the scooter. In the said accident, the scooterist died on the spot and the pillion rider sustained grievous injuries. The Station House Officer, Soan Police Station, registered a case in Crime No.73/96 under Sections 304-A and 337 IPC against the first respondent. Senior Traffic Inspector, Nirmal, conducted preliminary enquiry and came to

a conclusion that the accident occurred due to the negligence of the first respondent and submitted a report on 24.10.1996. Basing on the preliminary report, the first respondent was kept under suspension from 25.10.1996 onwards. The petitioner herein issued a charge sheet to the first respondent on 25.10.1996 for which he submitted his explanation on the same day. Being not satisfied with the explanation submitted by the first respondent, disciplinary proceedings were initiated against him by appointing an Enquiry Officer. After completion of the enquiry, the Enquiry Officer submitted his report on 07.11.1997 holding that the charges were proved. On 20.12.1998 the petitioner issued a show cause notice to the first respondent why he cannot be removed from service. On 10.04.1998, the first respondent submitted his explanation to the show cause notice. Being not satisfied with the explanation submitted by the first respondent, the petitioner passed a final order on 30.05.1998 and removed the first respondent from service. The appeal filed by the first respondent before the Deputy Chief Traffic Manager was dismissed on

29.08.1998. The first respondent filed review before the Regional Manager, A.P.S.R.T.C. and the same was dismissed on 14.12.1998. Aggrieved by the same, the first respondent filed an application under Section 2-A(2) of the Industrial Disputes Act on the file of the Labour Court-II, Hyderabad and the same was numbered as I.D.128 of 2000. The Labour Court allowed the I.D. in part directing the petitioner to reinstate the first respondent into service without back wages but with continuity of service and notional increments. The petitioner was directed to defer two annual increments of the first respondent with cumulative effect as a punishment for his contributory negligence proved in this case. Feeling aggrieved by the orders dated 19.09.2003 in I.D.No.128 of 2000, the present writ petition is filed.

Before advertng to the findings of the Labour Court, I am of the considered view that it is appropriate to refer the following case law:

1. **STATE OF HARYANA V. RATTAN SINGH**^[1] (PARA 4)

4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and

if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding even though of a domestic tribunal, cannot be held good. However, the courts below mis-directed themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passengers from American jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence not in the sense of the technical rules governing regular court proceedings but in a fair common sense way as men of understanding and wordly wisdom will accept.

2. SYED YAKOOB v. RADHAKRISHNAN^[2] (Para 7)

7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art.226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; 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. A writ can similarly 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 to 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. 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. 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. 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. 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. 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. In dealing with this category of cases, however, we 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. 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. It is within these limits that the jurisdiction conferred on the High Courts under Art.226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath V. Sued Ahmed Ishaque [1955] 1 SCR1104), Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam [1958] 1 SCR1240, and Kaushalya Devi V.Bachittar Singh: AIR1960SC1168.

As per the principle enunciated in the cases cited supra, this Court cannot interfere with the findings recorded by the Tribunal by invoking jurisdiction under Article 226 of the Constitution of India unless they are perverse.

A perusal of the record clearly reveals that the disciplinary

authority framed the following two charges against the first respondent:

1. "For having driven the Bus No.AP-10-Z/736 in a rash and negligent manner on the route Armoor-Nirmal on 22.10.1996 as a result of which the vehicle hit a scooterist near Kadthal village at about 10.30 hours and the scooterist fell down and died on the spot, which constitutes misconduct in terms of Regulation No.28(ix) (b) of APSRTC Employees (conduct) Regulations 1963".

2."For lack of anticipation and loss of control over the vehicle while driving the vehicle No.AP-10-Z/736 on the route Armoor-Nirmal which resulted in an accident on 22.10.1996 at about 10.30 hours at Kadthal village, as a result one scooterist died on the spot and the pillion rider received severe head injuries, which constitutes mis-conduct in terms of Regulation No.28 (xxix) and (xxxi) of APSRTC Employees (conduct) Regulations 1963".

During the enquiry on behalf of the petitioner, the conductor of the bus by name S.K.Dade and Sri E.V.Satyanarayana, STI, Nirmal were examined. The first respondent was also examined. A careful perusal of the enquiry report reveals that the Enquiry Officer has not referred charge No.2 in the enquiry report. It appears that the Enquiry Officer has not given any specific finding on charge No.2. A perusal of the record clearly reveals that the conductor of the bus has not supported the version of the petitioner. Admittedly, Sri E.V.Satyanarayana, STI of Nirmal, is not an eye witness to the accident. Sri E.V.Satyanarayana gave evidence basing on the statements. It is a known fact that a party to the proceedings may depose to suit his claim. When compared to STI, Nirmal, the conductor of the bus is the competent person to speak about the manner of the accident. If the testimony of the

conductor of the bus is taken into consideration, there was no negligence on the part of the first respondent to cause the accident. The finding of the Enquiry Officer that the accident occurred due to rash and negligent driving of the bus bearing No.AP-10-Z/736 by the first respondent only is not supported by any evidence much less legally admissible evidence. The Presiding Officer of the Labour Court has meticulously considered the oral and documentary evidence available on record in order to ascertain whether the findings recorded by the Enquiry Officer are based on any material or not. As per the finding of the Labour Court, the accident occurred due to lack of proper anticipation on the part of the petitioner. It is the duty of the driver of the vehicle to take all precautions in order to avoid the accident. If the first respondent has taken a little bit more care, there may be some chance to avert the accident. A perusal of the record also reveals the scooterist also to certain extent contributed to cause the accident. The Labour Court has visualized the situation and arrived at a conclusion that the accident occurred due to contributory negligence on the part of the first respondent as well as the rider of the scooter. The Labour Court has assigned cogent and valid reasons to its findings. There are no grounds much less valid grounds to upset the findings of the labour Court. Admittedly, the first respondent has not filed writ petition challenging the findings of the Tribunal. The findings recorded by the Tribunal are binding on the first respondent.

The next question that falls for consideration is whether the punishment imposed against the first respondent shall not commensurate with the gravity of the misconduct committed by him.

The first respondent faced the trial in C.C.No.157 of 1997 on the file the Court of Judicial Magistrate of First Class, Nirmal and he was acquitted on 06.01.2002. The petitioner removed the first respondent from service, whereas the Labour Court modified the punishment. The Labour Court directed the petitioner to reinstate the first respondent into service without backwages but with continuity of service and notional increments. The Labour Court after taking into consideration the gravity of the misconduct committed by the first respondent, imposed the punishment of non-entitlement of backwages. As observed earlier, the first respondent has not challenged the quantum of punishment imposed against him.

Taking into consideration all the facts and circumstances of the case, I am of the considered view that it is not a fit case to interfere with the findings of the Labour Court. The punishment imposed by the Labour Court commensurate with the gravity of the misconduct committed by the first respondent. There are no grounds much less valid grounds to set aside the award dated 19.09.2003 made in I.D.No.128 of 2000 by the Labour Court-II, Hyderabad.

Hence, the writ petition is dismissed. No order as to costs. Consequently, the miscellaneous petitions if any pending in this writ petition shall stand closed.

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T.SUNIL CHOWDARY, J

April 19, 2016.
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[\[1\]](#) AIR 1977 SC 1512

[\[2\]](#) AIR 1964 SC 477