

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION NOs.19767 and 36033 of 2015

Date : 5.1.2016

Between :

Madagala Appa Rao S/o Tatabbai
R/o H No. 12-4-104/1, Opp Ramalayam street
Pudimadaka Road, Anakapalli, Visakapatnam district

....Petitioner

And

APSRTC,
Rep by its CMD, Hyderabad and others

....Respondents

The Court made the following:

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COMMON ORDER:

Petitioner was driver in the respondent corporation. Alleging that petitioner driven the vehicle given to him in a rash and negligent manner, disciplinary proceedings were initiated against him. Two charges were leveled against him. In charge No.1, it is alleged that petitioner has driven the vehicle in a rash and negligent manner; hit a scooterist from its rear side and scooterist was ran over by the vehicle leading to his instantaneous death. In the second charge, it was alleged that petitioner failed to take appropriate precaution while overtaking stable bus and failed to observe traffic passing in same direction.

2. Detailed enquiry was conducted and based on the report of enquiry and explanation filed by the petitioner to the show cause notice, by detailed analysis of the evidence on record, disciplinary authority came to the conclusion that the accident occurred due to rash and negligent driving by the petitioner resulting in death of a boy. The disciplinary authority observed that the driver ought to have been careful in observing the scooterist and if only he was alert, the accident could have been averted. Disciplinary authority further observed that petitioner failed to take appropriate precautions while overtaking the stable bus. Having regard to the said findings, petitioner was removed from service. No appeal was filed by the petitioner.

3. With reference to the incident of accident and causing death of a boy, criminal proceedings were initiated in CC No. 458 of 1991 on the file of the VII Metropolitan Magistrate Court, Gajuwaka. Petitioner was acquitted in the said criminal case on the ground that the material witnesses turned hostile and there was no evidence on record to prove the charge leveled against the petitioner. It appears, petitioner raised industrial dispute against the removal and same was dismissed by the Labour Court, Visakapatnam by award dated 31.8.1995. Thereafter, petitioner kept quiet till 2015 and on 9.3.2015, petitioner claimed to have filed appeal against the order of removal

dated 23.1.1992. Alleging that said appeal is not disposed of, petitioner filed W P No. 19767 of 2015, wherein this Court passed interim orders dated 2.7.2015 directing the appellate authority to pass appropriate orders on the appeal filed by the petitioner. In terms of the directions issued by this Court, appellate authority passed orders on 7.10.2015 rejecting the appeal filed by the petitioner on the ground that there was inordinate delay of 23 years in filing the appeal and approaching the Court. It is also observed that having regard to the present age of the petitioner, he cannot have appropriate driving skill to have safe driving which is linked with the safety of passengers and other road users and therefore, the question of granting any such opportunity after long lapse of 23 years would not arise. Assailing the said order, petitioner filed W P No. 36033 of 2015. As seen from the orders passed by the disciplinary authority, after granting due opportunity and on detailed evaluation of the material on record and consideration of the explanation of the petitioner, order of removal was passed.

4. Learned counsel for petitioner fails to point out any procedural infirmity on the part of the respondent authorities in conducting the disciplinary proceedings resulting in punishment of removal from service. The only reason for claiming reinstatement is that petitioner was subsequently acquitted in the criminal case. It is settled law that mere acquittal in criminal case is not a ground for reinstatement into service. Further more, as seen from the judgment and decree, acquittal in criminal case was on the ground of witnesses turning hostile. On reading of order of removal it is clear that, insofar as departmental proceedings are concerned, there was sufficient material available on record, including photographs and the map of scene of accident, which clearly points out rash and negligent driving of the petitioner. Insofar as services of the employee is concerned, what is required to be seen by the disciplinary authority is whether the employee is negligent in performing his duties and continuation of

such employee in service would be detrimental to the organization. In the instant case, petitioner was a driver and as per the assessment of the employer, due to the rash and negligent driving by the petitioner, the bus met with the accident causing instantaneous death of a road user. Thus, merely because petitioner was acquitted in criminal case, cannot automatically follow in reinstatement to service as a matter of course.

5. Further more, the order of removal was made on 23.1.1992 and though petitioner was acquitted in criminal case on 26.7.1994, he kept quiet for almost 21 years after acquittal and then choose to file appeal and approached this Court in the year 2015. The petitioner was unsuccessful in the remedy under Industrial Disputes Act. Thus, the issue of removal has become final long ago. No satisfactory explanation is offered as to why petitioner has not availed further legal remedies against order of removal. Thus, no case is made out to entertain the writ petition against removal from service dated 23.01.1992. In the facts of this case, there is no illegality in the order passed by the Appellate Authority in rejecting the appeal warranting interference by this Court. Therefore, I do not see any merit in the writ petitions and are accordingly dismissed. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE:5.1.2016
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HONOURABLE SRI JUSTICE P. NAVEEN RAO

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