

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.3128 of 2007

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, by the petitioner/ Driver, is filed assailing the Award, dated 25.10.2004, in I.D.No.212 of 2002, passed by the learned Presiding Officer, Labour Court I, Hyderabad.

2. I have heard the submissions of *Sri G.Ravi Mohan*, learned counsel appearing for the petitioner, and of *Sri N.Vasudeva Reddy*, learned Standing Counsel appearing for the respondent-Corporation. I have perused the material record.

3. The facts and the chronological events as per the pleadings of the parties and the submissions made before this Court, in brief, are as follows:

The petitioner was appointed as a casual driver in the Corporation, on 13.06.1996. His services were regularized, on 01.08.1997. While so, on 28.05.2001, while he was driving the bus bearing No.AP 10Z 5613 on route Hyderabad- Yadgir, the said bus was involved in a fatal accident with a TRAX Jeep bearing No.AP 28M 3424, at about 07-00 hours near Kankamamidi stage. In the said accident, two persons succumbed to the injuries on the spot; and, another person succumbed to the injuries while being shifted to the hospital. The bus of the Corporation as well as the TRAX jeep suffered heavy damage. The Senior Traffic Inspector of the Corporation visited the scene of accident and prepared a rough sketch of the scene and obtained statements of the petitioner and the service conductor. He conducted a preliminary enquiry and submitted a report opining that there is *prima facie* case against the driver. On a report, the Station House Officer, Moinabad Police Station, registered a case in Crime No.105 of 2001 under Section 304-A IPC against the petitioner/ Driver. The police also visited the scene of offence and commenced investigation. Basing on the material record, the petitioner was suspended

from service, on 21.06.2001, and was served with a charge sheet. The charges formulated verbatim are as under:

- “1. For having driven the bus No.AP 10 5613 on 28-5-2001 at about 7-00 hours near Kanakamamidi stage on route Hyderabad-Yadgir with lack of anticipation and rash and negligent manner resulting an accident with a TRAZ bearing No.AP 28 M 3424 which was coming in opposite direction and instantaneous death of two occupants and another at Osmania Hospital, Hyderabad also severe injuries to three persons as detailed above which constitutes misconduct under Reg.28(ix)(a) & (b) of APSRTC Employees Conduct Regulations 1963.
2. For having failed to take precautionary measures while negotiating a turning with the bus No.AP 10 Z 5613 on 28-5-2001 at about 07-00 hours near Kanakamamidi stage on route Hyderabad-Yadgir, resulting an accident with a TRAX bearing No.AP 28 M3424 which was coming in opposite direction and heavy damages to both the vehicles as detailed above which constitutes misconduct under Reg.28 (xiii) of APSRTC Employees Conduct Regulations, 1963.”

As his explanation, dated 28.06.2001, was not to the satisfaction of the Corporation, an enquiry was ordered and an Enquiry Officer was appointed. After conducting the enquiry, the Enquiry Officer submitted a report, dated 05.09.2001, holding that the charges formulated against the petitioner are proved. As the explanation, dated 16.09.2001, submitted by the petitioner to the enquiry report was found unsatisfactory, a further show-cause notice, dated 05.10.2001, proposing penalty of removal from service was served on the petitioner and he was called upon to give his explanation. As his explanation, dated 12.10.2011, was found unsatisfactory and unconvincing, proceedings dated 08.11.2001, were issued ordering his removal from service. His appeal was rejected by the appellate authority, by order dated 16.01.2002. His review petition was rejected by the reviewing authority, by order dated, 14.03.2002. Aggrieved thereby, the petitioner raised an industrial dispute and filed a claim petition. The same was resisted by the Corporation. On merits, the learned Presiding Officer of the Labour Court *inter alia* held that one cannot say that the accident was only due to the fault of one of the two drivers

and that the TRAX jeep driver drove the vehicle at a high speed and was also responsible for the accident and that the penalty of removal from service is disproportionate to the charges proved; and, he had accordingly, set aside the said penalty and directed reinstatement of the petitioner into service as a fresh Driver and denied the benefits like continuity of service, back wages and attendant benefits. Aggrieved thereby, the petitioner is before this Court.

4. Learned counsel for the petitioner would submit as follows:

On 20.06.2001, the petitioner submitted a detailed explanation to the charges. However, the same was not considered in a proper manner by the Officers of the Corporation. The Enquiry was not conducted in a fair manner. The established procedure and principles of natural justice are not followed. The Enquiry Officer's findings are illegally accepted by the Disciplinary Authority, appellate authority and the reviewing authority. They did not independently apply their mind to the facts of the case. The petitioner/ driver was not rash and negligent in driving the bus. There was no fault on his part while driving the vehicle. The accident had occurred due to the rash and negligent driving of the driver of the TRAX jeep, which came in the opposite direction at a high speed. The bus, which started at Mahatma Gandhi Bus Station at 6 AM, reached Kanakamamidi at 7 AM. Nearly, it took one hour time to reach the said spot. It shows that the bus was proceeding at normal speed. The calendar case against the petitioner ended in acquittal. When the learned Presiding Officer of the Labour Court was of the view that the drivers of both the vehicles are responsible for the accident and that the TRAX driver drove his vehicle at a high speed and that he was also at fault, the learned Presiding Officer of the Labour Court ought not to have imposed a harsh punishment of reinstatement as a fresh driver. The petitioner having joined the service of the Corporation in the year 1996 rendered unblemished service of more than five years by the date of the subject accident. Because of the harsh penalty, heavy financial loss is caused to the petitioner and he also became a junior to

his colleagues and juniors, and lost his seniority. In that view of the matter, the punishment imposed by the learned Presiding Officer of the Labour Court is excessive and grossly disproportionate to the charge held partly proved and shocks one's conscience. The learned Presiding Officer ought to have granted continuity of service, attendant benefits and back wages. The writ petition may be allowed and the award insofar as the punishment imposed may be set aside.

5. Learned standing counsel for the Corporation would submit as follows:

The petitioner/ driver while driving the bus of the Corporation caused a fatal accident. In the said accident, three persons died and three others received injuries. A responsible officer of the Corporation immediately visited the accident spot and prepared a sketch of the scene of accident and recorded the statement of the petitioner. The enquiry officer after conducting a detailed enquiry, in accordance with procedure and principles of natural justice, recorded a finding that the charges formulated against the petitioner are proved. The enquiry was fairly and properly held and the findings of the enquiry officer are based on legal evidence. Therefore, the Labour Court ought not to have interfered with the finding of fact recorded in the departmental enquiry and ought to have refrained from re-appreciating the evidence. The said course adopted by the Presiding Officer of the Labour Court is not correct, proper and legal. He ought to have held that the charge formulated is proved and that the petitioner-driver of the bus was rash and negligent and caused the accident by not taking proper precautionary measures. The findings to the contra and the further finding that the accident was due to lack of anticipation and for not taking precautionary measures at the time of accident and that the driver of the TRAX vehicle was mainly responsible for the accident and that the accident was due to contributory negligence of the TRAX driver are incorrect and are not based on proper appreciation of evidence. In view of the ghastly

nature of the accident and the gravity of the charge that was held proved by the enquiry officer, the Corporation was justified in passing the order of removal of the petitioner from service. The Corporation is not bound to keep in service, the employee, with whom the relationship reached the point of complete loss of confidence/ faith. Further, the acquittal in the criminal case is of no help to the petitioner either to contend that he is not guilty of the charges formulated for the purpose of disciplinary enquiry or to successfully canvass that he is entitled to be reinstated into service with all consequential benefits. The learned Presiding Officer of the Labour Court ought not to have interfered with the said penalty when he also agreed with the finding that the driver of the bus was also responsible for the accident. However, out of generosity and mercy, the Corporation did not assail the award of the Labour Court insofar as the penalty imposed, though the same is on the lower side and not proportional to the gravity of the charge proved. The said punishment is proportional to the proved misconduct, in any view of the matter. There are no grounds much less valid grounds to further reduce the penalty. The writ petition is devoid of merit.

6. I have given earnest consideration to the facts and I have bestowed my attention to the submissions.

7. A perusal of the charge reflects that due to lack of anticipation and rash and negligent driving of the petitioner/ driver, the bus was involved in the accident with the TRAX jeep, which came from the opposite direction, and that in the said accident, two occupants of the TRAX succumbed to the injuries on the spot and that another passenger of the TRAX vehicle succumbed to the injuries while being shifted to the Osmania General Hospital. The record reflects that the TRAX driver also died in the same accident. An Officer of the Corporation, having received information, visited the scene of accident and prepared a rough sketch of the scene and recorded the statements of the driver

and the service conductor. He observed that at the accident spot, there was a steep curve and that both the vehicles involved in the accident were at the scene of accident and that the accident occurred while the drivers of the two vehicles that were coming in the opposite directions were negotiating a steep curve. It is not in dispute that both the vehicles were extensively damaged. The Officer of the Corporation observed that both the drivers might have driven their respective vehicles at high speeds and therefore, the version of the petitioner that he drove the bus carefully on the extreme left side of the road at the blind curve is false. He further opined that if the driver had taken proper precautions, the accident could have been less severe. He further opined that both the drivers failed to take proper precautionary measures to avert the accident while negotiating the blind steep curve and were responsible for the deaths of three passengers. Thus, he ultimately opined that both the drivers are responsible for the cause of accident. He also gave evidence accordingly at the time of enquiry. The petitioner stated in his explanation that it was mentioned by the passengers in the SR that the mistake is totally on the part of the TRAX driver and that the driver of the TRAX vehicle dashed the bus and that, after hitting the bus, the TRAX vehicle went to a side and that the said fact clearly indicates that the TRAX driver caused the accident. He also stated in his explanation that the TRAX vehicle was not pushed behind during the course of the accident and that the rough sketch of the scene of accident also clearly shows that at the spot of the accident, there is a blind curve; further, his version is that the said curve is blind only from the other side from which the TRAX vehicle came, but not from the side the bus was proceeding; and that there was a tree on the left side, and that, therefore, he has taken the bus to the left side; and that all the said facts signify that he is not rash and negligent and that he has taken necessary precautions to avert the accident. His further submission is that the accident occurred only due to the rash and negligent driving of the driver of the TRAX

vehicle, who drove his vehicle at a high speed at the blind curve at the accident spot. The learned Presiding Officer of the Labour Court examined the facts & circumstances and the evidence brought on record and held that one cannot say that the accident was only due to the rash and negligent driving of the driver of the bus and lack of anticipation on his part and due to his failure in taking precautionary measures; he further held that the accident was due to the fault of the drivers of both the vehicles and that the TRAX driver drove the vehicle at a high speed and therefore, imposition of penalty of removal from service upon the petitioner is not just and fair. In fact, the officer of the Corporation also opined that the accident was due to the contributory negligence of the drivers of both the vehicles.

8. On the above analysis, this Court, in the facts and circumstances of the case, does not find any grounds much less valid grounds calling for interference with the said findings recorded by the learned Presiding Officer of the Labour Court. Further, the law is fairly well settled that this Court shall not go into the adequacy or the reliability of the evidence and shall not interfere with the findings of the Labour Court, if there is some legal evidence, which supports its findings. When once conclusions arrived at by the learned Presiding Officer of the Labour Court are found to be sustainable on facts and the evidence, this Court will not normally substitute its subjective opinion in the place of one arrived at by the Tribunal.

9. In the decision in *Union of India v. P. Gunasekaran*¹, the Supreme Court dealt with the scope of interference of this Court under Articles 226 or 227 of the Constitution of India and held, *inter alia*, as under:

In disciplinary proceedings High Court is not and cannot act as a second court of first appeal and that the High Court, in exercise of its powers Under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence and that the High Court can only see whether:

(a) the enquiry is held by a competent authority;

¹ (2015) 2 SCC 610

- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- (i) the finding of fact is based on no evidence.

Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;
- (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii). go into the adequacy of the evidence;
- (iv). go into the reliability of the evidence;
- (v). interfere, if there be some legal evidence on which findings can be based.
- (vi). correct the error of fact however grave it may appear to be;
- (vii). go into the proportionality of punishment unless it shocks its conscience."

Therefore, having regard to the facts and the legal position, this Court holds that the contention of the petitioner/ driver that the charges formulated against petitioner/ Driver are not at all proved is devoid of merit and hence, needs no countenance in the facts and circumstances of the case. However, it is true that the award reflects that petitioner/ driver is not solely responsible for the accident and that the driver of the TRAX jeep drove his said vehicle at a high speed and that the accident had occurred due to the contributory negligence of the drivers of both the vehicles involved in the accident.

10. Coming to the quantum of punishment, the learned Presiding Officer of the Labour Court having recorded a finding that the driver of the bus was not solely responsible for the accident further recorded a finding that the driver of the TRAX jeep was also responsible for the accident and that he drove the said

TRAX vehicle at a high speed. Therefore, the learned counsel for the petitioner would contend that the accident was due to the contributory negligence and that the percentage of negligence of the TRAX driver is more and, therefore, even the modified the punishment of reinstatement into service as a fresh Driver is excessive and is grossly disproportionate to the gravity of the misconduct held proved by the Presiding Officer of the Labour Court and that therefore, the said punishment imposed against the driver requires downward revision. Therefore, he prayed for imposing a lesser penalty.

10.1 In reply, learned Standing Counsel would submit as follows: "A ghastly accident was caused by the petitioner/driver and that in the accident, three passengers of the TRAX vehicle died. The domestic enquiry was promptly conducted in accordance with procedure. The standard of proof in a criminal case is proof beyond reasonable doubt; whereas, in a domestic enquiry, the standard of proof is preponderance of probabilities. The enquiry was held independently of the criminal proceedings. Hence, the Corporation is justified in imposing the penalty of removal from service. Indeed the learned Presiding Officer of the Labour Court ought not to have interfered with the said penalty when he also agreed that the finding that the driver of the bus was also responsible for the accident. Therefore, the acquittal in the criminal case is of no help to the petitioner either to contend that he is not guilty of the charges formulated for the purpose of disciplinary enquiry or to successfully canvass that he is entitled to be reinstated into service with continuity of service, back wages and all attendant benefits. The findings of the criminal Court will have no affect on the previously conducted domestic enquiry. The departmental proceedings are more proximate to the incident in point of time when compared to the criminal proceedings. However, the Corporation out of generosity and mercy and on humanitarian consideration did not challenge the

award whereby reduced penalty was imposed. The said punishment is proportional to the misconduct, in any view of the matter.”

10.2 I have given detailed and thoughtful consideration to the submissions. The petitioner having joined the service in the year 1996 served the Corporation and had put in five years of unblemished service by the date of the accident, 28.05.2001. In the case on hand, even if the aspect that the petitioner was acquitted in the criminal case is kept out of consideration, there are yet facts & circumstances and also findings of the Labour Court, which require consideration while dealing with the measure of punishment. On a careful analysis of the facts & circumstances and the findings of the Labour Court, this Court is of the considered view that though the accident was due to the contributory negligence of both the drivers, it is manifest that the TRAX driver who drove the vehicle at a high speed at a blind and steep curve was largely responsible for the accident and that his contribution to the accident and the percentage of his negligence are more and, therefore, there are valid grounds to revise the penalty, which is grossly excessive and shocks conscience. Be it noted that by reinstatement as a fresh driver, the petitioner would be losing his entire past unblemished service and would be put to great hardship and financial loss and the same will have an effect on his retrial benefits and he would also lose his seniority and would become junior to his colleagues and juniors.

10.3 Viewed thus, this Court finds that the reduced penalty imposed by the Labour Court, in the facts and circumstances of the case, is excessive and is grossly disproportionate to the gravity of the proved misconduct and, therefore, the said punishment, which shocks conscience of the Court, requires a downward revision to meet the ends of justice.

11. Resultantly, the Writ Petition is allowed in part and the penalty of reinstatement into service as a fresh driver without continuity of service,

attendant benefits and back wages is set aside and instead the petitioner is ordered to be reinstated into service with continuity of service and with attendant benefits, however, without back wages and a penalty of deferment of annual increment for a period of two years with cumulative effect is imposed.

Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

M. SEETHARAMA MURTI, J

28th April, 2017
RAR

