

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No.16129 of 2007

ORDER:

Heard learned Standing Counsel for the petitioner-Corporation, Sri V.Narasimha Goud for respondent Nos.2 to 3 and learned Government Pleader for Labour.

2. The present Writ Petition came to be filed seeking issuance of writ of Certiorari calling for records in I.D.No.11 of 2004 before the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad and consequently set aside the award dated 19.06.2006 as the same is illegal and arbitrary.

3. The facts of the case are as under:

The first respondent was appointed as a driver in the year 1990 and his services were regularized with effect from 15.08.1992. He was removed from service on 02.09.2003 in relation to a fatal accident caused while driving a bus bearing No.AP11Z 979, in which five passengers of the auto died and eight passengers got injured. A criminal case came to be registered against the first respondent by the Ghatkesar police station and was charge sheeted for the following charges:

“For having driven the bus No.AP11Z979 with Service No.51/ 1 on route JBS-Kolanpak (Holiday Special) on 01.05.2003 in a rash and negligent manner near HPCL Petrol Bunk, Ghatkesar which resulted in fatal accident of the bus with a steering auto bearing No.AP24U 7539 resulting in death of five persons traveling the steering auto and grievous injuries to 8 other occupants of the auto, which constitutes misconduct in terms of Reg.28(ix) (a&b) of APSRTC Employees' (Conduct) Reg.1963.

For having driven the bus No.AP11Z-979 with S.No.51/ 1 on route, JBS-Kolanpak (Holiday Special) on 1.5.03 with sheer lack of anticipation near HPCL Petrol Pump, Ghatkesar, which

resulted in fatal accident of the bus with a steering Auto No.AP24U-7539, which constitutes misconduct in terms of Reg.28(xxxii) of APSRTC Employees' (Conduct) Reg. 1963".

Subsequently, the first respondent was placed under suspension pending enquiry. After perusing the enquiry report and evidence on record, the disciplinary authority ordered removal of the first respondent from service vide proceedings dated 02.09.2003. Aggrieved thereby, the first respondent preferred an appeal to the appellant authority which was rejected on 24.11.2003. Thereafter, the first respondent herein raised an Industrial Dispute before the Addl.Industrial-cum-Additional Labour Court, Hyderabad and the same was numbered as I.D.No.11 of 2004. It is stated that during the pendency of the Industrial Dispute, the employee i.e., the first respondent herein died and the LRs. were brought on record. After perusing the entire material available on record, the Labour Court held as under:

"In the result Award is passed by set asiding the order of removal from service passed by the Depot Manager, Uppal, dated 02.09.2003 vide proceedings No.01/ 2(5)/ 2003-UPL which was confirmed by the Divisional Manager, Hyderabad Division, vide proceedings No.PA/ 19(116)/ 2003-DVM-H, dated 24.11.2003 and directed the respondent to treat the death of the first petitioner as died in service with a punishment for the proved misconduct by withholding of one increment with cumulatively. The respondent was further directed to pay all the benefits to second and third petitioners treating the death of the first petitioner as in service with continuity of service full backwages and with all other consequential benefits. In the circumstances of the case both parties shall bear their own costs."

Aggrieved by the above said award, the present writ petition came to be filed by the corporation.

4. A counter affidavit came to be filed denying the averments made in the writ affidavit. It is averred in the counter that the award passed by the labour Court was only after appreciation of material available on

record and hence cannot be found fault with. It is stated that the driver joined the corporation on 25.06.1990 and his services were regularized with effect from 15.08.1992 and since then he has been working continuously till the date of his removal from services. After rejection of the appeal filed by the first respondent herein, an industrial dispute was raised vide I.D.No.11 of 2004. Pending the said dispute, the driver-first respondent herein died on 13.11.2005 and respondent Nos. 2 and 3 herein were brought on record in I.A.No.83 of 2006 in I.D.No.11 of 2004. It is stated that the late father i.e., the driver, while he was driving the vehicle in between Kolanapaka and Jubilee Bus Station, Secunderabad, one seven seater steering auto came in opposite direction, in down gradation, carrying 15 passengers along with goats as against seating capacity of seven members and hit the bus while he was overtaking the vehicle. For the above said accident, the first respondent herein was charge sheeted and after conducting enquiry, he was terminated from the service. It is stated that the Labour Court has rightly exercised its powers and granted relief in favour of the driver and hence the present petition is liable to be dismissed.

5. It is to be noted that in respect of the above said accident, a case in Crime No.68 of 2003 was registered for the offences punishable under Section 304 (A) and 337 of IPC of Ghatkesar Police Station. A preliminary enquiry came to be conducted by the Chief Inspector who after recording the statement of the first respondent herein and the conductor, reported that a prima facie case was established. On the basis of said evidence, the petitioner-Corporation suspended the first respondent herein and charge sheeted him on 28.05.2003. Subsequently, the respondent-driver submitted his explanation, but, basing on the evidence available on record, charges were held proved against him and the driver of the bus was removed from service on 02.09.2003. The appeal preferred by the

petitioner therein to the Divisional Manager was also rejected on merits on 24.11.2003 and as such an industrial dispute came to be raised. It is to be noted that pending I.D., the driver/petitioner therein died and as such L.Rs. were brought on record. A memo came to be filed on 11.05.2006 not disputing the validity of domestic enquiry and hence the domestic enquiry is said to be valid. During the course of trial, no oral evidence has been adduced. After considering the entire material which has been placed before the Court, the above mentioned award came to be passed and hence the writ petition came to be filed.

6. The main ground urged by the learned counsel for the petitioner-Corporation is that the Award passed by the Additional Labour Court is contrary to the facts and evidence on record. Having given a finding that there was negligence on the part of auto driver, the said Court ought not to have given relief referred to above.

7. It is to be noted that the deceased/ driver of the bus was aged about 42 years as on date of filing of the petition, but he died pending ID and as such his L.Rs. were brought on record therein. It is the case of the respondents that the L.Rs. of the first respondent/deceased are unable to speak the true state of affairs with regard to accident, as it is purely within the knowledge of the deceased. It is strenuously contended by the learned counsel for the petitioner-Corporation that no relief should have been granted.

8. In order appreciate the rival contentions, it is to be noted that in so far as to maintainability of Industrial Dispute before the labour Court, is not a subject matter of challenge before this Court. As stated earlier, both the counsels advanced their arguments basing on the merits of the case. It is to be noted that the first respondent was appointed as a driver by the Corporation. The bus which the deceased was driving met with an

accident by collision to an auto bearing No.AP240 7539 near HPCL Petrol Bunk, Ghatkesar, causing death of five persons traveling in the steering auto and injuries to 8 other passengers in auto. Though the enquiry report revealed that the accident took place due to rash and negligent driving of the first respondent herein, but the L.Rs. denied the averments contending that there was no negligence on the part of the deceased and that the accident took place due to lack of anticipation. It is to be noted that at the scene of offence, the driver of the bus was moving towards upward direction and to overtake the auto, the driver of the bus, while giving signals, took the vehicle to the right side which resulted in the said accident. While the auto was coming towards down gradient, the auto driver could have taken precautions by applying brakes or give way to the overtaking vehicle which was coming up gradient. Further, the material discloses that the auto driver was carrying more than 15 persons and was coming downwards with excess load, without applying brakes and not taking any precautions. The bus driver appears to have taken precautionary measures since he gave signal lights while overtaking the vehicle. Further, the preliminary enquiry report also shows that the right side portion of the 7 seater auto was completely damaged and the right side bumper of the bus got damaged. This indicates that prior to the accident both the drivers were under the impression that their vehicles would pass without collision, but unfortunately the accident took place. The labour Court, having regard to the material placed before the Court, has categorically made a claim that there is negligence on the part of the driver of the auto who was coming towards down gradient with high speed carrying more than 15 persons. It is impossible to control the vehicle with heavy load while moving down gradient. Having regard to the manner in which the accident took place, the labour Court felt that the accident took place due to negligence on the part of auto driver, but, however, at the

same time, the Court below did not rule out the negligence on the part of the driver of the bus. But by taking into consideration the manner in which the accident took place, I am of the view that Labour Court exercised its discretion in a rightful manner while passing the award.

9. Learned counsel for the respondents herein submits that since most of the negligence is against the driver of the auto, the authorities may be directed to pay all the benefits treating the death of the first respondent herein as in service, with continuity of service, full back wages and with all consequential benefits. He placed on record the judgment of the Apex Court in *U.P. State Road Transport Corporation, Dehradun Vs. Suresh Pal*¹ wherein the conductor of the bus was involved in carrying a bus with 20 passengers without ticket and held that punishment of dismissal inflicted upon the delinquent conductor consequent to domestic enquiry, ought not to have been interfered with by the High Court in exercise of its writ jurisdiction, otherwise the interference by High Court would amount to abuse of process of Court.

10. It is to be noted that this Court while issuing rule nisi granted interim suspension which reads as under:

There shall be interim suspension as prayed for, except considering the cases of the respondents for the purpose of compassionate appointment under the scheme available with the petitioner-APSRTC and further on condition that the petitioner-APSRTC deposits 25% of the back wages awarded by the Labour Court, within a period of six weeks from today. On such deposit, the respondents are permitted to withdraw the same without furnishing any security"

The petitioner-APSRTC stated that the above said amount was deposited and the petitioner has withdrawn the same.

¹ (2006) 8 SCC 108

11. Having regard to the judgment referred to above and taking into consideration the findings arrived at by the Court below, wherein it was observed that the first respondent was also responsible for the accident to a certain extent, this Court is of the view that the order under challenge stands modified by directing the petitioner-Corporation to pay all the benefits to the 2nd and 3rd respondents treating the death of the 1st respondent as in service with continuity of service, but with 60% of back wages within a reasonable time by giving credit to the amount already deposited.

12. Accordingly, the writ petition is disposed of. There shall be no order as to costs.

Miscellaneous petitions, pending if any, shall stand closed in the light of this final order.

08.02.2017
vnb



JUSTICE C. PRAVEEN KUMAR