

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT APPEAL No.1364 of 2017

JUDGMENT: (*per MGR,J*)

The present Writ Appeal, under clause 15 of Letters Patent, is preferred by the Andhra Pradesh State Road Transport Corporation (presently Telangana State Road Transport Corporation) (for brevity 'Corporation') being aggrieved by the order dated 03.07.2017 passed in W.P.No.21665 of 2017.

2. The facts and circumstances giving rise to this Appeal are as under:

The 1st respondent was employed as a driver in the appellant-Corporation. On 27.02.1996, the 1st respondent caused accident for which a charge memo was issued framing the following charge:-

"For having driven the Veh.no.AP9Z.9801 on 27.2.1996 which was given for 12.30 hrs Madhira-Karimnagar nightout service, in rash and negligent manner and without anticipation and control, due to which the vehicle hit the bus station Plat Form and bus station wall and waiting passengers at Madhira Bus station at about 13.15 hrs, resulting two lady passengers expired, two grievously injured and (7) seven others received minor injuries, which constitutes misconduct under Reg.no.28 (ix)(a)(b), (xxix) and (xxxii) of APSRTC Employees (Conduct) Reg.1963"

3. The disciplinary authority got conducted departmental enquiry. In the Enquiry the 1st respondent was given ample opportunity. The Enquiry Officer submitted his report holding that the charge was proved. Based on the enquiry report and on independent application of mind by the disciplinary authority, the

Depot Manager, Madhira, on 02.09.1996 had issued a show cause notice of removal to the 1st respondent. Questioning the said show cause notice, the 1st respondent filed W.P.No.19724 of 1996. This Court while dismissing the said Writ Petition on 05.08.2004, directed the appellant herein to consider the explanation submitted by the 1st respondent herein to the show cause notice and the factum of acquittal in the Criminal case. Pursuant thereto, the 1st respondent submitted his detailed explanation on 09.09.2004, he was personally heard on 04.10.2004, including the factum of his acquittal in a criminal case, C.C.No.208 of 1996 tried for the offences punishable under Sections 337, 338 and 304-A IPC by the Judicial First Class Magistrate, Madhira. After considering the same, the Depot Manager passed an order on 30.11.2004 imposing the punishment of deferment of annual increment for a period of two years with cumulative effect, besides ordering for treating the period of suspension as '*not on duty*'. Being aggrieved by the same, the 1st respondent preferred an appeal to the appellate authority, the Deputy Chief Traffic Manager, Khammam. The appellate authority, modified the punishment to that of deferment of annual increment for a period of one year with cumulative effect, vide proceedings in PA/19(91)/07-DY.CTM, dated 04.09.2007. Against the appellate authority order, the 1st respondent preferred revision petition before the Regional Manager, Khammam, which came to be rejected on 26.05.2008.

4. Upon raising an Industrial Dispute by the 1st respondent, the Joint Commissioner of Labour, Warangal, in his proceedings No.C1/3507/2009, dated 07-12-2009 referred the following point of dispute to the Industrial Tribunal, Warangal:

“Whether the Management of Depot Manager, APSRTC, Madhira Depot is justified in imposing the punishment of deferment of annual increment for a period of one year with cumulative effect, treating the suspension period from the date of suspension till report for duty at Bhadrachalam Depot from 13.09.1996 to 25.09.2001 in respect of Sri T.Govindu Driver?

5. Later, the above said reference was modified, vide proceedings No.1712/2005, dated 31-05-2016, by the Joint Commissioner of Labour, Warangal, and the amended point of dispute reads as under:-

“Whether the Deputy Chief Traffic Manager, APSRTC, Khammam Region, Khammam is justified in modifying the punishment to that of deferment of annual grade increment for a period of one year with cumulative effect by his proceedings dated 04.09.2007 in respect of Sri T.Govind, Driver?

6. The reference Court-Industrial Tribunal, Warangal, answered the reference infavour of the 1st respondent, holding as follows:

“Reasons on the aspects pointed out in the explanations submitted by the petitioner to the show cause notices were not recorded and further the fact of acquittal and the circumstances in which the acquittal was recorded by the Criminal Court were not taken into consideration by the disciplinary authority and by the respondent while exercising the disciplinary power. Therefore, the reference has to be answered in favour of the petitioner and against the respondent.”

7. The Corporation filed W.P.No.21665 of 2017 against the order of the Industrial Tribunal passed in I.A.No.9/2010,

dated 26.09.2016, mainly contending that the Tribunal gravely erred in holding that the disciplinary authority had not considered the explanation submitted to the show cause notice and factum of acquittal of the 1st respondent in the criminal case, contrary to the evidence available on record. On 03.07.2017, the writ petition was came to be dismissed holding that neither the disciplinary authority nor the appellate authority have thought it fit to record any reasons for their conclusion that 1st respondent deserves to be punished and that no attempt was made by both the officials, the disciplinary authority and appellate authority to record reasons for not accepting the explanation submitted by the 1st respondent to the show cause notice.

8. Sri B.Mayur Reddy, learned counsel appearing for the Corporation, would submit that the Tribunal as well as the learned single Judge failed to see that the disciplinary authority having issued the show cause notice of removal from service, on consideration of 1st respondent's explanation to the show cause notice and the factum of his acquittal in the criminal case, as per the orders of this court in W.P.No.19724 of 1996, passed the order dated 30.11.2004 imposing the punishment of deferment of annual increment for a period of two years instead of ordering removal; the Tribunal having held that the appellant had conducted the enquiry in a fair and just manner, ought not have interfered in the punishment; and re-appreciating the evidence is not valid unless the punishment is shockingly disproportionate to

the proved misconduct. In support of his contention, he relied on the judgment of the Supreme Court in *Chairman, Life Insurance Corporation of India and Others vs. A.Masilamani*⁽¹⁾ wherein it is held as under:-

“It is settled law that once the court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the court cannot reinstate the employee. It must remit the case concerned to the disciplinary authority for it to conduct the enquiry from the point that it stood vitiated, and conclude the same. It is further settled law that whether or not the disciplinary authority should be given an opportunity to complete the enquiry afresh from the point that it stood vitiated depends upon the gravity of delinquency involved. Thus, the court must examine the magnitude of misconduct alleged against the delinquent employee.”

9 to 10 delte. 9 to 12

9. We have carefully considered the above submissions.

10. It appears that the Labour Court completely misdirected itself to the issues involved and passed an award setting aside a penalty of stoppage of one increment with cumulative effect, merely on the basis of two reasons namely (a) that the explanation offered by the workman was not recorded; and (b) that the acquittal by the Criminal Court was also not taken note of. But both these reasons are completely flawed. As we have pointed out earlier, the accident in which the 1st respondent-driver was involved, was fatal, resulting in the death of two persons. Giving the benefit of doubt to the 1st respondent, only a penalty of deferment of annual increments for a period of two years with cumulative effect was ordered by the Disciplinary Authority. The Appellate Authority took a lenient

¹ (2013) 6 SCC 530

view and reduced the penalty to that of deferment of annual increment for a period of one year with cumulative effect. The very fact that the Appellate Authority allowed the appeal and modified the original order would show an application of mind. The disciplinary authority himself had applied his mind for imposing a higher punishment. He did not impose the penalty of removal from service as originally proposed in the show cause notice. Therefore, the jurisdiction of the Labour Court in such cases was not to interfere so lightly.

11. The acquittal in the criminal case, unfortunately, in motor accident claims, does not result in the automatic exoneration of the liability of the Transport Corporation to pay compensation to the families of the victims of the accidents. Acquittal by the Criminal Court, has been repeatedly held, to be of no consequence, in departmental proceedings. The Labour Court was concerned only with two reasons namely (a) whether the enquiry was fair and proper; and (b) whether the penalty was proportionate. After finding the enquiry to be fair and proper, the Labour Court interfered with the penalty on the ground of non-application of mind. Once the enquiry has been held to be fair and proper and the punishment imposed is the least punishment, even the question of proportionality does not arise.

12. But the learned Judge did not consider the perversity of approach on the part of the Labour Court. The learned Judge ought to have seen that the Labour Court went beyond the jurisdiction vested in it. Therefore, we are of the view that the

award of the Labour Court as confirmed by the learned Judge, deserves to be set aside.

13. In fact, the punishment of deferment of annual increment for a period of two years with cumulative effect besides treating the period of suspension as "*not on duty*" was imposed by the disciplinary authority basing on the enquiry report, which was conducted in a fair and just manner as held by the Tribunal after duly considering the explanation to the show cause notice of removal and the factum of acquittal of the 1st respondent in criminal case. Even in appeal, the appellate authority having concurred with the punishment imposed by the disciplinary authority, purely on humanitarian ground, reduced the punishment of deferment of annual increment for one year instead of two years.

14. Accordingly, the writ appeal is allowed, the order of the learned single Judge is set aside, the writ petition is allowed and the award of the Labour Court is also set aside. No order as to costs. Miscellaneous Petitions pending in this appeal, if any, shall stand closed.

V. RAMASUBRAMANIAN, J

M.GANGA RAO, J

10th November, 2017
TSNR